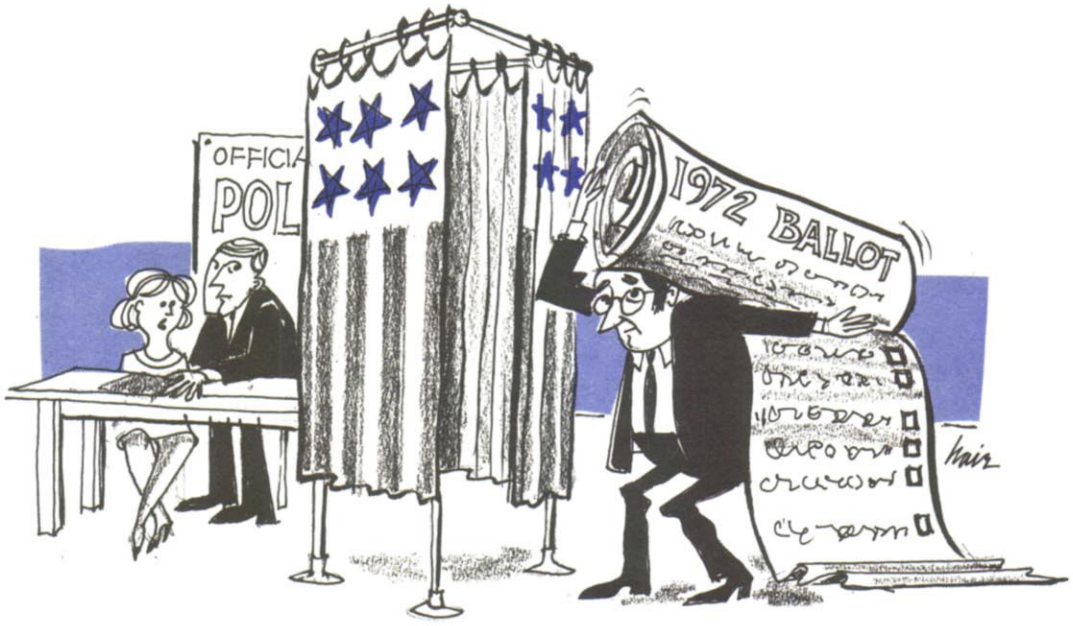
California Journal

THE MONTHLY REPORT OF STATE GOVERNMENT AND POLITICS

Report on Key Legislative Races
Propositions 9-14, 17, 19-21



Revenue Sharing Becomes a Reality

The Lobbyists the Public Pays

The Clash Over Coastline Access

October 1972

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a california journal . . .

Sex and the Senate

Senator James Mills now says he will let his fellow Senators vote on ratification of the proposed constitutional amendment to guarantee women equal rights with men. By changing his mind, though the irony went unrecorded at the time, Mills was exercising what hitherto had been considered to be a woman's prerogative. As a result, however, when the Legislature reconvenes next month, Mills will urge his Senate Rules Committee colleagues, all males as it happens, to release the amendment, which they've held with a mother's tenacity since last spring. But what prompted Mills' change of mind, apparently, was a bit of *realpolitik* by the National Organization of Women. NOW shrewdly called in its ultimate weapon in the cause of sexual equality, a University of New Mexico professor, name of Kanowitz, to have a talk with the stubborn San Diegan. Man to man. . .

In a similar concern for sexual equality, incidentally, an unwed father in Los Angeles protested unequal legal treatment concerning adoption of his offspring. "I was told," the 27-year-old father of none complained, "that I had no rights whatsoever." His attorney seemed to agree. "Under California law," he argued, "only the mother has the right to give consent for adoption." In this case, that's just what the mother, a 17-year-old high school senior, had done. The point here, of course, is that, if this position has legal merit, politicians can no longer embrace the Equal Rights Amendment, as some of them have seemed to, as a motherhood issue. It would also mean that the amendment's ratification would have more than what Senator Mills considers to be "chiefly symbolic significance" and, with true equality, cut both ways through the thicket of atavistic jurisprudence.

The cost of keeping legislators

Any sign of legislative life at all will be welcome to many taxpayers who may not be as familiar with the subtleties of governmental productivity as are *Journal* readers. Last month's papers reported that the deliberations of their Assemblymen and Senators through August cost the taxpayers about $2 million in salaries and expenses. That may seem to be a lot. On the other hand, with today's high costs, what of quality and substance can one buy for that price? The voters themselves probably spent more than that in their own legislative efforts, which yielded the nine initiatives on next month's ballot.

There is some dispute, however, whether the people had much to do with qualifying some of the propositions, or even knew, in some cases, what they were signing. Some critics charge, too, that a number of elected officials — the Attorney General was named — had illegally taken over the initiative process. Evelle Younger denied any impropriety regarding himself and the initiative to restore the death penalty, and Governor Reagan cheerfully cleared himself at a press conference on September 21st when he reported that a petition for that same initiative "was being circulated out of my own house". The implication was clear: his house was used, not his good offices.

Enough charges have been made of improprieties of one sort or another, however, that the Assembly Elections Committee will hold hearings early this month in Los Angeles. Likely to come up are those campaign slogans that are edited so carelessly that they could actually mislead a voter. Some southern California billboards, for example, suddenly sprouted a brief message urging defeat of the Coastline Initiative with the explanation that "the beach belongs to you — don't lock it up". Somehow — lack of space, perhaps — the rest of the sentence, "from the developers", never made it. The California State Employees Association ran into the same sort of problem, apparently, when the phrase, "keep state salaries in line", left no room on bumper stickers for the explanatory phrase, "with higher salaries for comparable work elsewhere".

Is it '74 already?

Well, politics is everywhere, as Governor Reagan informed us during his press conference. A lot of the charges concerning qualification of the initiatives can be attributed to politics, he suggested, on the part of almost any one of a dozen or so possible candidates for his job in 1974. He included among those Secretary of State Brown, part of whose present job is to watch over the electoral process. "All I can say is that when you walk down the halls any more you really have to be careful not to bump into a candidate," was all Reagan would say.

It wasn't a vintage Reagan ad lib — the "any more" seems misplaced — but the truth of his words was documented in a fascinating article in the *San Francisco Chronicle*. It listed about a dozen ways to run for governor and named a politician to go with each. One method *The Chronicle* may have overlooked, however, and Assembly Minority Leader Bob Monagan brought it to mind was to run as an incumbent. Monagan wasn't saying that Reagan didn't mean his oft-repeated assertion that he is not a candidate for a third term, but overriding considerations sometimes intervene. Party unity, for example. Republicans know that the Democrats will spill each other's blood on the way to 1974, and that's a political enthusiasm the GOP tends not to share.

So goes the Reagan-dragged-kicking-and-screaming-into-a-third-term scenario. What's yours?

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Republicans Face Tough Battle to Regain Control of the Assembly

At the state legislative level, Republicans may be benefitting from the Presidential and proposition campaigns in the state (see box), but they started off at a great disadvantage in the Assembly, and it may be difficult for them to make it up. Eight Republican Assemblymen are not running for reelection in November for one reason or another while only four Democratic seats are open. Moreover, in only one of the four seats where the Democratic incumbent is not running is there a substantial contest, but of the eight Republican seats only two are not in doubt and one of the remaining six has already been virtually conceded to the Democrats.

Of the 12 Assembly seats in which there is no incumbent, the following five offer little prospect of a switch in party control after the November election:

Dist.	County	Former Incumbent	Registration Dem.	Rep.	Likely Winner
27th	San Mateo	Ryan (D)	63.0	31.5	Papan (D)
39th	Los Angeles	Hayes (R)	51.0	42.2	Bond (R)
43rd	Los Angeles	Moorhead (R)	42.0	51.6	Antonovich (R)
63rd	Los Angeles	Brathwaite (D)	73.4	22.1	Dixon (D)
65th	Los Angeles	Pierson (D)	73.8	21.3	Holoman (D)

In the remaining seven seats there is a substantial possibility of a change in party control. District by district, this is how the races look:

2nd Assembly District (Humboldt, Mendocino, and Sonoma Counties). Assemblyman Frank P. Belotti, who has represented this district since 1951, announced his intention to retire at the end of his present term. He barely carried the district in 1970, and a serious automobile accident last fall left him less sanguine about the rigors of another tough campaign. Barry Keene, a Democratic attorney from Santa Rosa who lost to Belotti by 4.4 percent of the vote in 1970, is back this year with a highly polished campaign that won national press notice when Keene and his wife bicycled the length of the north coast district. Opposing Keene is Deputy District Attorney Lawrence G. "Gary" Antolini, who was recruited and guided by state Republican leaders.

The district's June registration figures were 55.8 percent Democratic and 38.5 percent Republican. Benefitting from the 18-year-old registration efforts at Sonoma and Humboldt State Universities and from the opportunity to register up until 30 days before the election, Democrats should increase their edge. Deprived of the incumbent advantage, the Republicans face a very tough battle to retain the seat, but their attractive candidate and well-financed campaign could do the job. At this point, however, the district appears to be leaning Democratic.

10th Assembly District (Contra Costa County). Assemblyman James W. Dent is not running for reelection in this East Bay district, which he won away from the Democrats in 1966 when Jerome Waldie left to run for Congress. The district's 55.1 to 40.1 percent Democratic advantage in registration is probably not enough for the Democrats to recapture the seat; only Waldie's great personal popularity and his incumbent's advantage made it possible for him to hold the seat.

Supervisor Warren N. Boggess ran away with the Republican nomination in June, defeating his nearest rival by 15,000 votes in what some thought would be a close race with the former Speaker of the Assembly, Luther Lincoln. Boggess' high name recognition as pilot of the traffic helicopter for a San Francisco radio

Presidential and Proposition

With control of the Legislature during the crucial reapportionment period at stake once again, both political parties enter the final weeks of the 1972 election campaign with at least a mathematical possibility of controlling the Assembly and the Senate. The Democrats have the advantage in seeking to retain or expand their control. The Republicans face a tough uphill battle to control both houses, but have great incentive in the knowledge that a Republican majority in both houses could mean the ability to dictate the terms of reapportionment, and hence political control of the state, for many years to come. Democrats only win a stalemate if they retain control, because the Governor can veto any measure they produce that is unsatisfactory to Republican interests.

The struggle for control of the state Senate boils down to two races that either party could win. If the Republicans win both seats, one of which they now hold, they move up from a 19-21 deficit to a 20-20 house in which Republican Lieutenant Governor Ed Reinecke could theoretically cast decisive tie-breaking votes (see Senate Races box).

In the Assembly, however, the race for control is much more complicated with more than a quarter of the seats vulnerable to a possible switch in party. With so many potentially close races, such imponderable outside forces as the effect, beneficial or harmful, of riding Presidential coattails and of a clutch of controversial ballot measures, cloud the outlook for the Assembly makeup for next year.

In anticipation of a possible Nixon landslide in California, much attention has focused on the extent to which Democratic voters who cast their votes for a Republican President will stay with that party as they mark the rest of their ballots. This so-called coattail effect is well documented, especially in states where political parties are stronger and party loyalty is greater than in California and where voting machines make it possible to throw a single switch to cast a vote for every candidate from one party.

The coattail effect is traditionally weak in California, where the norm seems to be that a single party will

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Campaigns Cloud Outcome of Legislative Races

not sweep even the top of the ticket. Thus in 1970, Democrats John V. Tunney and Edmund G. Brown Jr. won while Republicans carried the rest of the partisan statewide races. In 1968, Richard Nixon carried the state while Democrat Alan Cranston was winning the U.S. Senate race. Similar switch-voting has been noted in other years and at all levels of the ballot.

As a consequence, legislative campaign strategists from both parties are discounting an appreciable coattail effect from even a substantial Nixon victory in California, should that materialize. In part, they are also relying on the recent findings of the California Poll conducted by Mervin D. Field. "At this point in time," Field wrote, "neither the traditional 'coattail effect' . . ., nor the 'reverse coattail effect' (*i.e.*, an unpopular man at the head of a ticket losing votes for his party's candidates), seems to be operative to a marked degree in California's 43 Congressional races." In fact, some observers are talking about a possible anti-coattail effect in which Democrats who cross over to vote for Nixon at the head of the ballot will guiltily return to the fold more strongly than usual further down the ticket.

What may turn out to be far more important is not so much the extent to which Democratic voters switch or not, but the extent to which they vote or not. If a substantial number of Democrats — liberals who feel McGovern has abandoned his liberalism, and conservatives who believe he is too liberal — feel that they can't vote for either McGovern or Nixon, they must stay home and bring disaster to Democrats in other state races.

The extent to which generalizations about the possible effect of the Presidential campaign statewide will be valid in a given local race is simply unknown at this point. But even a small effect in a close race could be decisive. And a small effect in just a few of the many possible close races could dramatically affect the total composition of the Legislature, especially the Assembly, next year.

The inordinate number of controversial ballot propositions which confront the voters are also jokers in the deck lending considerable uncertainty to the outcome. The most controversial initiatives are Proposition 14, the Watson property tax initiative; Proposition 17, the death penalty initiative; Proposition 19, the marijuana initiative; Proposition 21, the Wakefield busing initiative; and Proposition 22, the agricultural labor relations initiative. Though less controversial, Proposition 15, relating to state employees' salaries, Proposition 18, the obscenity control initiative, and Proposition 20, the coastline protection initiative, are also causing some candidates great discomfort.

While members of both parties are having trouble with some propositions at times, Democrats are doing most of the squirming. Valley Democrats are having greatest difficulty with the farm labor initiative, which they must oppose if they want to keep the considerable farm labor organization vote that they usually can count on. Opposing Proposition 22, however, can cost them substantial support from the majority of voters in these areas. For Central Valley Democrats it's a no-win situation, while most Valley Republicans can support Proposition 22 with the knowledge that they won't antagonize their normal supporters.

The initiative to reinstate the death penalty attracts wide support among voters, and the marijuana initiative tends to attract equally strong opposition. Yet, Democrats tend to be on the short end of both of these issues. John Vasconcellos, in a possible Republican-upset district in Santa Clara County, isn't helping his chances by spending most of his time explaining his "support of pot." And the Watson initiative has San Diego County Democrat Bob Wilson cornered. He somehow managed to get himself into the position of being practically the only person in the entire county, regardless of party, to support the initiative.

Again in the case of proposition campaigns, as in the case of the Presidential races, the impact of these issues on the votes cast for legislative candidate may not be great. However, in close races these small factors may be decisive, and, since there appear to be many close races, the impact on the Legislature as a whole could be substantial.

station is also an advantage. David E. Boatwright, an attorney, won the Democratic primary by more than 20,000 votes and will give his Republican opponent a hard race, but at this time the district seems likely to stay Republican.

29th Assembly District (Kern, San Luis Obispo, and Tulare Counties). This seat, which Assemblyman William Ketchum gave up this year to run for Congress, is another of those the Republicans wrested from the Democrats in 1966. Despite a registration advantage of 57 percent to 38.5 percent, the Democrats hold little hope of recapturing the seat this year in a district where party loyalties run low.

Attorney Rod Williams, the Democratic nominee, comes from Bakersfield. He is caught on the horns of the Proposition 22 dilemma: for opposing it he gains little support that he could not expect anyway, while losing many of the marginal Democratic supporters he must hold in order to win. The beneficiary of Williams' dilemma is Robert P. Nimmo from Atascadero, on the other side of the district.

30th Assembly District (Stanislaus and San Joaquin Counties). When Assemblyman John G. Veneman gave up this seat to go to Washington with President Nixon in 1969, a special election was held to pick a successor. In one of the costliest and closest Assembly races in the

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history of the state, Clare L. Berryhill, the Republican, defeated Ernest LaCoste, the Democrat, by 50 votes. In a rematch, a year and a half later, La Coste defeated Berryhill by 1,600 votes. Now LaCoste and Berryhill have taken their battle to the Senate, and two new contenders battle for the 30th District.

The candidates are Raymond C. Simon, the Republican, and John E. Thurmond Jr., the Democrat, both of whom ran unopposed in the primary. Thurmond is a Modesto County Supervisor; Simon is a Modesto City Councilman, who ran second to Berryhill in the four-man special-election primary in 1969.

The registration edge for the Democrats is 62 percent to 34.2 and, even in this district of traditionally low party loyalty, that is a healthy advantage. Republicans are making an all-out effort here, however, and it is one of their three most likely opportunities for picking up a seat.

48th Assembly District (Los Angeles County). semblyman Bill Brophy abandoned this seat, which he won in a special election with enormous statewide effort, in order to run for Congress in a race that most observers feels he has no chance of winning. Had he run again in this 61 percent Democratic district, he could have expected substantial statewide Republican support, and the party would have had a slim chance of retaining the seat. As it is, Brophy has received little support for his congressional bid and has withdrawn from active campaigning to be with his wife, who faces manslaughter charges stemming from an automobile accident. And Republicans have all but written off efforts to retain the heavily Mexican-American 48th District in the Republican column.

Bill King, Brophy's administrative assistant, is the sacrificial lamb in this race, in which Richard Alatorre, administrative assistant to Assemblyman Walter Karabian, is the probable winner.

50th Assembly District (Los Angeles County). big upset in 1966, Assemblyman William Campbell defeated incumbent Phillip L. Soto to bring this seat into the Republican column. The Democrats have a solid chance to win the seat back now, because Campbell stepped down to run, unsuccessfully as it turned out, for the Los Angeles County Board of Supervisors.

The Republican standard-bearer is Keith W. Miller, a Whittier attorney who won his party's primary handily. The Democrat is Joseph B. Montoya a La Puente City Councilman who lost to Campbell by 1,600 votes in 1970. The 59.2 to 33.9 percent Democratic registration edge is a strong advantage for Montoya, but his appeals to the large Mexican-American concentration in the western part of the district have hurt him among blue-collar Anglo Democrats in the eastern side of the district.

A substantial statewide effort by both parties is focused on this race. One of the state's top Republican

Congressional Races at a Glance

All of California's present 38 congressional seats and five new ones added as a result of population growth since 1960 are up for election this year in newly reapportioned districts. Because the redistricting was done primarily with the interests of incumbents in mind, very few of the incumbent seats involve a contest. And even the five new districts were drawn in such a way as to minimize partisan battles.

Two incumbent Representatives were defeated in the primaries, however. Democrat George P. Miller was upset in the 8th Congressional District by Fortney "Pete" Stark, who appears likely to go on to win in this 61.5 percent Democratic district; and John G. Schmitz was defeated by Andrew J. Hinshaw, who is sure to go on to win this Orange County district.

The toughest race for an incumbent in November is in the 6th Congressional District in San Francisco and Marin Counties. William S. Maillaird, the Republican incumbent, won by 12,000 votes in 1970, which is the closest any incumbent came to defeat this year. The Democrats had a 54.3-39.7 percent registration advantage then. This year reapportionment added the northern portion of Republican Marin County to Mailliard's district. Nonetheless, the Democratic registration edge increased to 56.3-37.1 by June of this year and is expected to rise further.

Mailliard's opponent is Roger Boas, San Francisco Supervisor and a former chairman of the Democratic party as a result of Republican efforts to register $150,000 in the primary. With that kind of money and a growing registration advantage (growing, ironically, in part as a result of Republican efforts to register Democrats for Nixon), Boas has a solid chance to upset the incumbent.

Democrats have a longshot chance to upset Paul N. "Pete" McCloskey in the 17th Congressional District of San Mateo and Santa Clara Counties. They have only a 52.1 percent registration here, but that is offset, to some extent, by the fact that McCloskey is considered too liberal by some of his party's registrants. Whether enough of them will abstain or cross over to give challenger James Stewart a chance remains to be seen.

Five new seats

In the five new seats, Democratic Assemblyman Leo J. Ryan seems a safe bet to beat Charles E. Chase, the Republican in the 11th District; Assemblywoman Yvonne Brathwaite is a sure winner in the 72.3 percent Democratic 37th District in Los Angeles County; and Senator Clair W. Burgener is equally sure in the 42nd District of Orange and San Diego Counties.

In the two remaining new seats there is more of a contest. In the 36th Congressional District, which includes all or portions of Kern, Kings, San Luis Obispo, and Santa Barbara Counties, the June registration was 58.4 percent for the Democrats and 36.5 percent for the Republicans. Assemblyman William M. Ketchum from Paso Robles seems to have the edge over Timothy Lemucchi, a Bakersfield attorney who ran unsuccessfully six years ago against Assemblyman Kent H. Stacey.

In the 38th District, most of the population of which is in San Bernardino County, a very hard campaign is being waged between George E. Brown Jr., the Democratic former congressman from Los Angeles who gave up his seat to run unsuccessfully for the U.S. Senatorial nomination two years ago, and Howard J. Snider, the Mayor of the City of Ontario. The district is 65.0 percent Democratic, an advantage it will be difficult for the Republican to overcome.

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elected officials is said to be betting $500 that Miller will win, but the outcome seems very much in doubt at this time.

74th Assembly District (Riverside County). Another of the hottest races in the state is shaping up in this district, which Assemblyman W. Craig Biddle left to run for the state Senate.

With what is usually considered to be a too-narrow registration edge of only 52.9 to 42.0 percent, Democrats might not be expected to carry the district. However, the Democrats have a strong candidate in Walter M. Ingalls, a former deputy district attorney. Moreover, Biddle failed to carry Riverside County in his close Senate special election victory in June. Robert O. Hunter, a businessman who was soundly defeated by John V. Tunney for Congress in 1968, is the Republican candidate.

In summary, there are eight seats with no incumbent that were held this year by Republicans and four that were held by Democrats. Of these, Democrats face a tough fight in only one seat. Republicans, however, have to campaign hard to protect five of their non-incumbent seats; of the other four, one has been conceded to the Democrats and three are safe.

Vulnerable Assembly incumbents

Each party has perhaps three incumbent Assemblymen who are vulnerable despite the advantage of running as an incumbent. The three Republicans are Kenneth L. Maddy in the 32nd Assembly District, W. Don MacGillivray in the 36th District, and Charles J. Conrad in the 57th District. The Democrats are Ken MacDonald in the 37th Assembly District, Kenneth Cory in the 69th District, and Bob Wilson in the 76th District.

Race by race, here's the situation:

32nd Assembly District (Fresno County). Kenneth Maddy won this seat in 1970, defeating P. J. "Pat" Camaroda, the Democrat, by more than 12,000 votes in a district that is more than two-thirds Democratic. Camaroda was considered a weak candidate, but the size of the margin demonstrates Maddy's personal popularity. Alex Brown, the Democratic challenger this year, is a college professor with a much better chance for a victory. Nevertheless, Republicans, who concede that the race is close, are fairly confident of success, and Democrats consider the battle an uphill one.

36th Assembly District (San Luis Obispo and Santa Barbara Counties). W. Don MacGillivray won a sizeable upset victory over incumbent Democrat Winfield Shoemaker in 1968. MacGillivray won again in 1970, but by only 1,600 votes. And, between November 1970 and June 1972, some 9,000 additional Democrats have been added to the voter rolls in the 36th District, while the number of Republicans registered has remained almost constant. This trend, if it continues, could sweep in young Gary Hart, who ran unsuccessfully for Congress in 1970. Hart defeated the 1970 Assembly Democrat nominee, Kenneth A. Palmer, in a hard-fought primary in June, but the wounds of that battle have been healed. The Hart campaign has mostly managed to walk the narrow line between the substantial student vote from Isla Vista and the bulk of the Democratic voters. If Hart wins, however, he will be among the Democrats with the lowest registration advantages in the Assembly — 51.3 to 41.1 percent in June — so it clearly won't be an easy victory.

Senate Races at a Glance

Half of the state's 40 Senators are up for election on November 7th. Of the 20 seats, 11 have been held by Republicans and nine by Democrats. One incumbent Democrat is not seeking reelection, and this district has produced the hotter of only two real contests out of the 20. The other contest is for the seat of San Francisco incumbent Republican Milton Marks. The Democrats hold a narrow 21-19 margin in the Senate.

3rd Senatorial District (12 northern California counties). Twenty-year veteran Stephen P. Teale, a Democrat, announced his retirement earlier this year. Following much jockeying and "after you Gaston", Ernest LaCoste, who had only two years ago won his Assembly seat in a very hard-fought campaign, was persuaded to run for the Democrats. Clare L. Berryhill, who lost this Assembly seat to LaCoste in 1970, is the Republican nominee.

The June registration figures for the 3rd District were 59.0 percent for the Democrats, 37.0 percent for the Republicans, and Stanislaus county, which comprises 40 percent of the district, was carried by LaCoste by 1,600 votes when he defeated Berryhill. However, both parties, led by the Senate leadership, are campaigning ferociously for the seat. Lieutenant Governor Ed Reinecke has been all over the district in Berryhill's behalf. The race is rated a toss-up.

9th Senatorial District (San Francisco). Liberal Republican Senator Milton Marks first won this seat in a special election in 1967, and won reelection comfortably in 1968. This year, he faces a very strong challenge from San Francisco Supervisor Ron Pelosi. Only a Republican as liberal as Marks could even come close to winning in this district; the Democrats have 66.6 percent of the registrants, compared to 26.0 for the Republicans. This race also appears very close.

Senate control

There is one other longshot possibility of an upset. Republican Howard Way faces stiff opposition from Herbert R. Davis a Tulare County Supervisor in the 59.1 percent Democratic 15th District.

In summary, if the Republicans win in the 3rd and hold their other seats, they will gain an even 20-20 split in Senate seats, with Republican Lieutenant Governor Ed Reinecke holding the theoritical tie-breaking vote. The only circumstance where this tie-breaking would be effective, however, is where the vote was 20-20. Thus, the Democrats can deny the Republicans a working majority by simply assuring that one of their number is absent on a close vote, producing a 20-19 vote which could not be broken by the Lieutenant Governor. Since 21 votes are needed for most acts, Republicans would still lack a working majority in the Senate in 1973.

37th Assembly District (Ventura County). While the Republicans may lose one incumbent in the 36th District they may well defeat a Democrat in the 37th. Incumbent Assemblyman Ken MacDonald currently holds the seat with the Assembly's second lowest Dem-

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ocratic registration edge, 52.0 to 42.2 percent in June. MacDonald probably would face a tough race in any case, but this year he compounded his difficulties by announcing his intention not to run for reelection, then changing his mind. Moreover, Ventura County Supervisor John T. Conlon is running a strong, well-financed campaign to capture the seat for the Republicans. Thus, the race looks good for the Republicans despite the fact that MacDonald won by 8,000 votes in 1970 when he appeared almost certain to lose.

57th Assembly District (Los Angeles County). Republican Charles J. Conrad has been an Assemblyman since 1947. In recent years, however, his district has been drifting away from him, becoming much more Democratic and ethnic than before. Conrad won by 4.6 percent in 1970. Apparently smelling blood, no fewer than 11 Democrats filed for the nomination, something almost unheard of in a district held by an incumbent. Emerging from the brutal battle that ensued was Howard L. Berman, a young attorney who established residence in the district only this year but who received almost as many votes as all his opponents combined. His opponents, however, were so angered by his campaign tactics that they have picketed his headquarters and refuse to endorse him.

69th Assembly District (Orange County). Probably more money has been lost over the years betting on Democrat Kenneth Cory's defeat than on all the other races combined. Modish and of distinctly liberal persuasion, Cory confounds political analysts time after time by winning in territory where President Nixon is sometimes called radical. Having tried everything else, the Republicans may have found the ultimate weapon this year, however, in William E. Dannemeyer, a former Democratic Assemblyman turned Republican. The registration here is 52.7 percent Democratic to 41 percent Republican.

76th Assembly District (San Diego County). Overconfidence and a poorly run campaign brought Republicans their first special-election defeat in a decade last February. The winner was Bob Wilson, who ran with the advantage of having the same last name as the local Republican Congressman and San Diego's Republican mayor. The June registration for the district was 48.6 percent Democratic to 44 percent Republican, a heretofore sure GOP margin. The Republicans are mounting an all-out effort behind Ron Del Principe to take the seat back. This is the Republicans' best shot at upsetting an incumbent. Wilson has been campaigning every minute since his surprise election, however, and the resources at his disposal as an incumbent added to the increased Democratic turn out, which can be expected in a statewide election, keep him in the running at least.

Some longshots

In some races, each party holds out some hope if everything works right. Things seldom do, of course, so these are not likely wins, but every election year sees one or two such longshots cross the wire ahead of the field.

These are the Democratic-held Assembly seats where Republicans are rated a longshot chance of victory:

24th Assembly District (Santa Clara County). Lawrence Fargher, a Realtor, could defeat liberal Democrat John Vasconcellos, whose support of the marijuana initiative has not endeared him to most of the voters in this 58.1 percent Democratic district.

25th Assembly District (Santa Clara County). Milpitas Vice Mayor Robert E. Browne could edge Alister McAlister in this 59.9 percent Democratic district which was held by the Republicans two years ago.

41st Assembly District (Los Angeles County). In 1970 Jim Keysor defeated incumbent Republican Henry Arklin by 5,000 votes in this 57.6 percent Democratic district. Now Arklin is trying to win the seat back.

58th Assembly District (Los Angeles County). Harvey Johnson always faces a tough race in this conservative 59.3 percent Democratic district. Republican challenger Kurt Hahn, a Duarte City Councilman, is an agressive campaigner, and could win.

72nd Assembly District (San Bernardino County). A vituperative Democratic primary battle may have left incumbent John Quimby vulnerable to the strong campaign of Timothy M. Dolan, a dairyman from Upland who qualified for the November runoff with a write-in campaign in June.

Republican-held Assembly seats where Democrats have a longshot possibility of winning include the following:

4th Assembly District (six north state counties). Substantial Democratic registration gains centered at UC Davis and Chico State University have made a race out of George Shaw's campaign to unseat incumbent Republican Assemblyman Ray E. Johnson, who overwhelmed his opponent two years ago.

33rd Assembly District (Fresno and Madera Counties). This 61.0 percent Democratic district has been represented by a Republican since Ernest Mobley defeated Charles B. Garrigus in 1966. Now Garrigus is trying for a comeback.

52nd Assembly District (Los Angeles County). Conservative Republican Floyd L. Wakefield won reelection by about 4,000 votes two years ago against Martin I. Jackson. The district is over 60 percent Democratic, however, and Wakefield has been ill this year, giving Jackson some hope of winning this time.

60th Assembly District (Los Angeles County). Between November 1970 and June 1972, Republicans lost 3,450 registrants in this district, while Democrats gained nearly 10,000 registrants for a net increase of 13,000. In 1970, Roger Jon Diamond, the Democratic challenger, lost to incumbent Republican Paul Priolo by about 11,000 votes. In their re-run this year, the new registrants could bring victory to the Democrats in this district in which they hold a marginal 51.3 percent edge in voter registration.

64th Assembly District (Los Angeles County). Similar logic applies to the 64th district, where Robert Cline, the incumbent, won this seat by 6,500 votes in a no-incumbent race in 1970. Since then, Republican registration has risen by 3,000 while Democratic registration has gone up 15,000, enough to give Democratic challenger Patrick Gallagher a chance.

Assembly control in 1973

Four seats that the Democrats control now are very much in doubt in this election. The Republicans are conceding one of the seats they now control; another eight Republican seats, of which only three are held by incumbents, are also rated doubtful. Each party has an additional five seats that are marginal. Thus, it appears that Republicans have only the slimmest of chances of capturing four additional seats to regain control of the Assembly.

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Revenue Sharing is Expected to Become a Reality This Month After Eight Years of Debate and Negotiation

Revenue sharing between the federal government and the state and local governments has been the subject of discussion and debate by economists, federal officials, governors, mayors, two Presidents, legislators, journalists, and many others for at least eight years. At times, the Congress has seemed close to working out a plan by which a large share of federal tax revenues could be allocated directly to hard-pressed state and local governments, only to have the promise lost in the tangle of partisan conflict between the two political parties, the Congress and the President, and the Senate and the House of Representatives.

Suddenly, however, revenue sharing has become, or is about to become, a reality. On September 14th, after less than a week of concentrated effort to find a compromise between the program approved by the House in June and the program passed by the U.S. Senate in early September, a two-house conference committee reported that it had reached such a compromise and had a bill that would be reported out to the House and Senate by September 26th, in time for passage by both houses and signature by the President in early October.

Key provisions

The compromise program is to provide a total of $5.3 billion to state and local government in calendar 1972, nearly $6.0 billion in 1973, $6.1 billion in 1974, and so on, adding up to $30.1 billion over a five-year period. One-third of the money is to go to the states and two-thirds to cities and counties, which are to establish special revenue sharing trust funds into which they are to deposit what they receive to facilitate later auditing by the federal government. California's total share for 1972 is $556.1 million, of which $185.4 million will go to the state and $370.7 million will go to the cities and counties. The first payments, which are for the first half of the current calendar year, are expected to be made in October. The second payments may be made in January.

The final formula for distribution of the funds among the states is a compromise between the formula adopted by the House, which favored the larger states, and that adopted by the Senate, which favored the smaller states. Under the House plan, California was to get $610 million this year, and under the Senate plan $416.9 million. The compromise formula is intended to give each state the higher of either the Senate or the House formula; in fact, however, the allocation for each state has been reduced by a factor of 9.1 percent, so that the total for 1972 will fit within President Nixon's budget.

The $370.7 million that California cities and counties are to receive this year is first to be divided among the counties according to three factors: their share of the total state population; their total tax effort (including that of the cities within their territory) in relation to the tax effort of all the other counties; and the inverse of their per capita income compared with that for all other counties (i.e., the poorer counties get more). Within each county, the funds are to be divided between the county and all of its incorporated cities according to the taxes collected by the county (excluding school taxes), on the one hand, and the taxes collected by all the cities within that county, on the other. Then the cities' share for each county is to be divided on the basis of the same three factors used for the county distribution formula: population, tax effort, and inverse per capita income. The minimum allocation is $200 or 20 percent of the amount per capita allocated to all local governments in the state. The maximum is 50 percent of a city or county's tax collections (plus intergovernmental transfers) or 145 percent of the amount per capita allocated to all local governments in the state. (Starting in January 1973, each state will be free to adopt a modification of the initial intrastate allocation formula, to be used at the county level, the city level, or both.)

There are no restrictions on how the state may spend its one-third share, except that it may not be used to match other federal funds, and its use to reduce income taxes may result in its getting a smaller share of the national total whenever the state shares are recalculated. Local governments may spend their shares for any lawful capital expenditures that are "ordinary and necessary", but spending for current expense must be in the fields of public safety, environmental protection, public transportation, health, recreation, social services for the poor and aged, libraries, and financial administration. There is no "maintenance of effort" requirement from local governments, but the states are prohibited from taking advantage of the new program by reducing the financial aid they have been providing to local government from other funds.

How to spend it?

Neither the state nor local governments appear to know yet what they will do with the money they have sought for so long. Officials of the Reagan administration have said that the state share may be used either as part of a larger tax relief-school finance package similar to AB 1000, which was defeated just before the Legislature recessed in August, or simply to provide an across-the-board reduction in state income taxes. Since there is little likelihood that the administration and

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Legislature will agree on a tax program that can be passed in the few weeks of the 1972 session that will remain when the Legislators return in November, a tax reduction appears to be a distinct possibility. In the absence of a new tax relief program, there will also be some pressure to refund to taxpayers the estimated $459 million in surplus state tax revenues for the 1972-73 fiscal year.

Should Proposition 14 be approved by the voters in November, however, it is evident that the state's gain from revenue sharing, plus available state tax surpluses, will have to be used to close the gap in state and school district funding which the Watson Initiative will create. And even if it does not, there is ample evidence that many legislators, particularly in the Senate, will insist that the additional funds be used to begin compliance with the *Serrano* decision on public school support (which held the present system to be unconstitutional because it results in providing better education in districts with the greatest local tax base).

Local officials are being very cautious about saying how they intend to spend their share of the federal funds — in part, it appears, because few have made specific plans, and in part because they fear that federal spending guidelines, when they are finally drawn up, will attach a great many more strings to the funds than are evident in the legislation itself. Several large counties have found that this year they will be able to reduce tax rates for county services for the first time in many years, and are not, therefore, in the fiscal bind that made life for county officials so difficult only a year or two ago. Most city officials, however, are still struggling with budgets that grow faster than revenues and still leave many important services underfunded, and they can expect to hear soon from various citizen groups and others who have ideas on how the new funds should be spent.

Social service funds

For a time, many county officials feared that revenue sharing might do them as much harm as good because the U.S. Senate's version of the program carried a provision that would have placed a $600 million ceiling on federal funding for social services provided by county welfare departments for welfare recipients. These services include child care, family-planning assistance, foster care, treatment for alcoholics, homemaker services for the aged and disabled, family counseling, and services for the mentally retarded. The cost of such services has gone up rapidly in recent years as the states, led by California and Illinois, have discovered how to gain maximum federal funding for these activities, for which the federal government pays 75 percent on an unlimited basis. The cost to the federal government in 1971-72 was approximately $2.5 billion, or more than four times the ceiling proposed by the Senate, and it is going up rapidly. Had that ceiling been maintained in the final version of the revenue sharing act, several California counties might have suffered a net loss in federal aid; that is, their gain from the revenue sharing provisions would have been more than offset by the reduction in social services funding. Moreover, many services might have been eliminated, as the federal funds were to be restricted to covering child-care and family-planning services only.

Fortunately for those counties, the Senate-House compromise removed most of the proposed restrictions and raised the ceiling to $2.5 billion, a figure that will still result in some loss in budgeted social services funding in several counties — and a $30 million reduction statewide — but one that will still leave those counties some choice as to whether they take over a greater share of the cost themselves or reduce service levels. However, the actual spending will be determined by a separate appropriation bill, and it is reported that the Nixon administration hopes to hold federal spending for social services to $1.7 billion, an amount that would increase the loss for all California counties to $48 million.

Birth of a compromise

The revenue sharing plan that is now being adopted has come a long way since it was first given public notice in a 1964 speech by Walter H. Heller, chairman of the Council of Economic Advisors from 1961 to 1964 under Presidents Kennedy and Johnson. Both Johnson and Senator Barry Goldwater endorsed the idea in their 1964 campaigns for the Presidency, but Johnson later gave his support mainly to the possibility of bloc grants for specific purposes, such as education and law enforcement, rather than to a general revenue sharing plan. Moreover, the rapid rise in federal expenditures during the height of the Vietnam War postponed the possibility of revenue sharing of any kind on a substantial scale.

The issue came back into prominence in 1971, however, when President Nixon, under heavy pressure from the governors of the largest states, took the lead in the fight for revenue sharing. Nixon proposed to Congress in January of 1971 a two-part program to provide $5 billion in unrestricted revenue sharing and an $11 billion grant consolidation program in six areas of federal aid. The package immediately came under heavy attack from House Ways and Means Chairman Wilbur Mills, who promised to hold hearings on the President's plan, but made it clear that he strongly opposed the idea and would push for federal assumption of state expenditures for welfare as an alternative way of easing the financial burden of the states. Mills learned from the nations' mayors and governors, however, that there was great demand for some form of revenue sharing, and during the course of the year he conducted lengthy negotiations with them to devise an alternative to the President's plan. As a result, by the end of 1971 Mills had gained considerable support from the mayors and governors for a plan of his own.

Mills' plan

Mills' plan provided direct revenue sharing in the amount of $5.3 billion per year, of which about $1.8

STATE AND LOCAL SHARES OF COMPROMISE REVENUE SHARING PLAN, MAJOR STATES
(In Millions)

	State Share	Local Share	Total
California	**$185.4**	**$370.7**	**$556.1**
Other Major States:			
New York	**197.0**	**394.1**	**591.1**
Illinois	**91.5**	**183.1**	**274.6**
Michigan	**73.9**	**147.8**	**221.7**
Pennsylvania	**91.2**	**182.6**	**273.8**
Texas	**81.4**	**163.0**	**244.4**

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billion was to go to the states and $3.5 billion to the cities and counties (the President's $5 billion was to be divided differently in each state but the shares would have been much closer to 50-50 nationwide). Mills' plan was also designed to encourage the levying of state income taxes, by giving each state federal aid equivalent to 15 percent of the revenue it collected from income taxes. Preliminary estimates indicated, however, that four states -- New York, California, Illinois and Massachusetts -- were to receive 40 percent of the total aid, which was too much for the other states to swallow. Another unpopular provision heavily favored cities in the south with low per capita income levels over cities in the Northeast and West.

By the time a House bill finally cleared the Ways and Means Committee in April 1972, it was a lot closer to the President's plan than was Mills' proposal, but the allocation of funds between the states and local governments was the same as in Mills' bill and the larger urban states continued to be favored. After some delay, the House passed the bill 274-122 on June 22nd and it then went to the Senate Finance Committee, which immediately began its own hearings. The Senate committee, chaired by Senator Russell Long, worked on its version of revenue sharing throughout July, and had its bill ready to go to the Senate floor by mid-August. That bill was passed by the Senate 63-20 on September 12th and sent directly to the Senate-House conference, which worked out the final version adopted by both houses this month.

SCHEDULED LEGISLATIVE INTERIM HEARINGS

The following state legislative committees have scheduled interim hearings for Fall 1972. Hearings are open to the public, and interested persons are encouraged to attend. Contact committees for further details.

Oct. 11-12 **Assembly Revenue and Taxation Committee.** 107 S. Broadway, Rm. 1138, Los Angeles. Subject: Watson Initiative.

Oct. 13 **Senate Committee on Local Government.** State Building, Rm. 1140, San Francisco. Subject: Senate Bill 611 to use local gas tax revenues for city street and county road beautification.

Oct. 18 **Assembly Committee on Environmental Quality.** State Hearing Room, 1111 Jackson Street, Oakland. 1 p.m. Subject: problems associated with fuel and oil lines.

Oct. 20 **Assembly Transportation Committee.** Silver Room, Community Concourse, San Diego. 10 a.m. Subject: state vs. regional and local roles in transportation management.

Oct. 25 **Senate Committee on Local Government.** State Building, Rm. 1194, San Francisco. Subject: revision of comprehensive planning law and responsibilities.

Oct. 26 **Assembly Revenue and Taxation Committee.** 170 Fell Street, Rm. 30, San Francisco. Subject: Watson Initiative.

Oct. 26-27 **Assembly Committee on Environmental Quality.** State Building, 315 McAllister Street, Rm. 1194, San Francisco. 9 a.m. Subject: the Bay Area Air Pollution Control District.

CALIFORNIA CALENDAR

Meetings of the following state boards, commissions, and councils are listed each month; if one of these is not listed, it can be assumed that it is not scheduled to meet this month. Boards, commissions, and councils to be included are: Board of Education; Board of Equalization; Board of Governors of the California Community Colleges; Board of Trustees of the California State University and Colleges; Consumer Advisory Council; Coordinating Council for Higher Education; Council on Criminal Justice; Highway Commission; Little Hoover Commission; Park and Recreation Commission; Regents of the University of California; and Social Welfare Board.

Oct. 6-7 **Law Revision Commission.** Vacation Village Hotel, Mission Bay, San Diego. 9:30 a.m.

Oct. 11 **Social Welfare Board.** Santa Barbara Biltmore, Santa Barbara. 7:30 p.m. Joint meeting with the County Welfare Directors Association.

Oct. 12-13 **Board of Education.** 1416 9th Street, Sacramento, 9 a.m.

Oct. 17-19 **Board of Equalization.** 333 East Walnut Street, Pasadena. 10 a.m.

Oct. 18-19 **Board of Governors of the California Community Colleges.** Hanalei Hotel, 2270 Hotel Circle, San Diego.

Highway Commission. Public Works Building, 1120 N Street, Sacramento. 9 a.m.

Oct. 20 **Park and Recreation Commissoin.** 217 West 1st Street, Los Angeles. 9 a.m.

Regents of the University of California. University Extension Center, 1100 South Grand Avenue, Los Angeles.

Oct. 24-26 **Board of Equalization.** 1020 N Street, Room 102, Sacramento. 1:15 p.m.

Oct. 26 **Little Hoover Commission.** Los Angeles. Date tentative, time and place undecided.

Oct. 27 **Council on Criminal Justice.** Quality Inn, Los Angeles International Airport, Los Angeles. 9:30 a.m.

Nov. 7 **General Election**

Nov. 13-14 **Coordinating Council for Higher Education.** Sacramento. Time and place undetermined. Special meeting of Select Committee on the Master Plan.

The following boards and commissions follow a standard monthly schedule and thus are not included in the Calendar: Allocation Board, second Tuesday of each month; Board of Agriculture, first Thursday; Commission of Housing and Community Development, third Wednesday of every other month; Lands Commission, last Thursday of each month; Merit Award Board, second Wednesday; Public Works Board, last Monday; Reclamation Board, second and fourth Fridays; San Francisco Bay Conservation and Development Commission, first and third Thursdays; Soil Conservation Commission, fourth Tuesday; Transportation Board, first Thursday; Water Commission, first Friday; and Water Resources Control Board, first and third Thursdays. Please contact the agency for meeting time and place.

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The Lobbyists the Public Pays: One of Every Ten Advocates Represents Local Government

In the August issue, in which we contrasted the past and present character of lobbying in Sacramento, we identified eight categories of lobbyists, or Legislative advocates, as they are called officially. Among these eight categories, are the lobbyists for local government, who now make up one-tenth of all the lobbyists registered this year by the Legislature's Joint Committee on Rules.

Who is the largest single employer of lobbyists in Sacramento, with about 60 advocates on the payroll? Racing interests, maybe, or developers? Perhaps the public utilities? Or organized labor? The answer in each case is no, for the big roller behind this operation is, of all people, the California taxpayer.

The East Bay resident, for example, pays the salary and expenses of a former University of California football star, Rod Franz, to represent the East Bay Municipal Utility District before the Legislature. The 700 inhabitants of the City of Industry, which covets corporate treasure the way Palm Springs courts private wealth, pay Robert S. Rope $48,000 a year to maintain the advantages that attracted the industry that explains the city's existence. Bus patrons in Sacramento, Fresno, Gardena, Montebello, Long Beach, and San Diego, among other cities, help pay dues in the California Association of Publicly Owned Transit Systems, which in turn retains John C. Wells to represent their common interests in the capital (a task he also performs for the City and Port of Long Beach). And Los Angelenos, being so numerous and inhabiting such a sprawling urban area, finance a skilled lobbying team representing the Board of Supervisors, the City Council, the District Attorney, the Sheriff, the Police Chief, the school board, the Metropolitan Water District, a rapid-transit district, and any number of other special districts.

In all, this force of about 60 lobbyists represents more than one of every ten organizations listed in the *1972 Directory of Legislative Advocates and Organizations*, and all operate on funds derived, in one way or another, from tax revenue.

Creatures of the state

The employment of local government lobbyists goes back at least to the days just after California won statehood when several enterprising towns engaged in a spirited lobbying effort for the honor of becoming the capital, among them Monterey, San Jose, and Benicia (each of which were briefly successful) and, of course, Sacramento. These lobbyists are more numerous now, of course, and the variety of the agencies they represent reflects a governmental system that has grown not only bigger but more complex. Lobbyists today represent cities, counties, special districts, public education, law enforcement agencies, and a miscellany of governmental hybrids — regional agencies that are voluntary associations of an area's local governments, redevelopment agencies operating under state law to receive federal money, and poverty-law groups created under federeal programs but working with state law.

What these agencies have in common is an existence dependent, in varying degree, upon state government, its laws, rules and regulations. Their lobbying operations suggest that they find that their stakes in state government are simply too great to be left entirely to their legislative representatives. There is, however, one notable exception, and it stems from a legal quirk: because of an apparent inconsistency in state laws regulating legislative advocacy, as lobbying has become known since its practitioners began muting their plaids, the growing number of lobbyists for state government agencies are not required to register with the Legislature's Joint Committee on Rules; nor are they required to file monthly reports on expenses exceeding $25. As state employees, their lobbying tactics are limited largely to providing information supporting their agencies' positions on pending legislation, some of which they originate. In this, however, they differ little from the local government lobbyists who must register as advocates and file the monthly expense reports, though these latter, it is true, are not always, or even at all, solely public employees.

Indeed, when it comes to discussing a lobbyist's working relationship with a client, public or private, only a relative handful turn out to be salaried employees lobbying exclusively for one client. One such among the local government lobbyists is Los Angeles County's Francis McLaughlin. More often, one or more clients or agencies contract with a free-lance lobbyist for a percentage of his time. Smaller agencies with fewer legislative problems may retain an advocate on an hourly or other contingency basis.

Types of agencies

Looking at these local government lobbyists by the kind of public agency they represent — municipalities, counties, special districts, public education and law enforcement — helps to carify and illuminate the long roster of lobbyists paid by California taxpayers. Who are they?

Lobbyists for the cities — The League of California Cities, which was formed in 1878, fields a four-member legislative team, to which it devotes about one quarter of its $491,000 annual budget. But a number

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of cities — the state's largest and, as already noted, some of the state's smallest — consider their needs important enough or unique enough to require individual representation as well as what membership in the league affords them.

Among the large cities maintaining their own lobbyists are Los Angeles, San Francisco, Long Beach, San Diego and San Jose. The City of Los Angeles' chief lobbyist, John P. Sheehan, a former state deputy finance director and deputy controller, is joined as necessary during the session by two deputy city counsels, at a cost to city taxpayers of about $67,000 a year. The City and County of San Francisco maintains former Mayor John F. Shelley in Sacramento with two deputy counsels as needed, at an annual cost of about $115,000. San Jose is represented during the session by Stanley Z. Twardus, who draws a salary of $2,217 a month plus expenses. The City of San Diego spends about $35,000 on its sporadic two-man representation.

The handful of smaller cities with individual lobbyists either have specific legislative problems during a given session or seek to preserve a special status, as in the case of such industrial cities as Emeryville in Alameda County, and Torrance, Thousand Oaks, Vernon and the City of Industry in Los Angeles County. The latter's lobbyist, Robert S. Rope, qualifies the $48,000 salary he lists with the Joint Committee on Rules by advising that only about half that sum supports his lobbying activity, which he describes as defensive in nature; the other half goes, he says, into work on intercity relations. (Rope also represents the California Contract Cities Association, a group of smaller cities, many of them in southern California, that contract with county governments for such urban services as police and fire protection, and trash and garbage removal.)

Industrial cities offer corporations generally below-average tax rates and such services as police and fire protection and traffic departments geared to the special needs of industry. In the case of Vernon, for example, City Clerk F. A. Ziemer notes that the city's business tax is based upon a firm's average number of employees, not gross receipts, the more common practice where the tax is levied primarily as a revenue source. The industrial cities have relatively small overnight populations (700 in Industry and only 261 in Vernon), but their daytime populations number in the thousands — 35,000 in Industry, according to Rope, and 60,000 in Vernon, by Ziemer's estimate. "They call us a special-interest city, and say that we don't contribute anything, which is erroneous," says Ziemer. He points to the $50 million payroll generated in his city and notes that, with only 261 inhabitants in Vernon, virtually all the money earned there is spent elsewhere. "We think of ourselves as 'exclusively industry'," Ziemer adds, and have done so since Vernon's founding in 1905. To keep matters that way, Vernon retains one of Sacramento's biggest-spending lobbyists, Daniel J. Creedon (who also represents brewery interests, morticians, and the California Highway Patrol).

A similar vocation is practiced in Alameda County by the Town of Emeryville, which describes itself as "the industrial city of the west". Its lobbyist, Allen D. LeFevre, also handles private accounts. One of them is the Judson Pacific Steel Company, which he registered as a client after an article was published relating how LeFevre had quietly slipped a bill through the Legislature that permitted Emeryville to annex the property occupied by Judson without the otherwise-required approval of the Oakland City Council. (The bill was repealed this year, and Judson Pacific continues to pay Oakland's higher tax rate.)

Classification of Lobbyists

- *Local and Regional Government Lobbyists* — Advocates for cities, counties, associations of some city and county officials, and such special-purpose bodies and regional agencies as public mass-transit districts.
- *Single Private Interest Lobbyists* — Lobbyists who represent a single corporation, industry, or industry association and who usually are expert in the business or industry they represent.
- *Multiple Interest Lobbyists* — The contract or free-lance lobbyists who represent clients in a variety of fields on a fee basis and who ordinarily sell their services as expert lobbyists rather than as experts in the interests they represent.
- *Public Utilities Lobbyists* — Utility companies regulated by state agencies have unique legislative concerns stemming from their special relationships to government, and their advocates must combine the expertise of the single-interest lobbyists with a detailed knowledge of the rate-setting agencies.
- *Association and Labor Union Lobbyists* — There are a substantial number of lobbyists who represent large statewide associations — teachers, state employees, voters, nurses, etc. — who generally have more of a background in the group they represent than in the techniques of influencing legislation, although this is not always true, particularly in the case of labor union lobbyists.
- *Public Interest Lobbyists* — All lobbyists would like to be identified in this category, but it is intended to identify the growing number who represent organizations concerned with protection of the consumer, the environment, civil liberties, children, and the poor.
- *State Agency Lobbyists* — Several state agencies are regularly represented before the Legislature by employees who have such titles as "legislative coordinator", "counsel", or "legislative secretary". These lobbyists are not required to register as legislative advocates.

Lobbyists for the counties — What the League of California Cities does for municipal government, the County Supervisors Association of California tries to do for the 58 counties. That it is relatively less successful is suggested by the fact that the state's most populous counties (Orange, San Diego, Ventura, San Bernardino, Sacramento, Santa Clara, San Mateo, the City and County of San Francisco and of course Los Angeles) feel the need to run their own lobbying operations despite membership in CSAC. Nonetheless, CSAC is an active lobbying force, maintaining a seven-member staff in Sacramento (not all of whom lobby), and devoting about a third of its $160,000 budget, by its own estimate, to working the Legislature. A good deal of time is spent, too, in conferring with state agency offi-

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cials on such matters as highways, welfare, and health care (an area of influencing government, incidentally, that falls outside state lobbying laws, which apply only to lobbying the Legislature, but that is cultivated by most active advocates, public-interest and private).

Los Angeles County's lobbying operation, not surprisingly, is the most potent force in this category. Francis McLaughlin and the two deputy county counsels who work with him during the session cost the taxpayers of Los Angeles, by McLaughlin's estimate, more than $100,000 a year. (The county maintains a similar operation in Washington, D.C.) The three work closely on occasion with lobbyists from the other populous counties, whose interests on matters concerning people — health care and welfare, for example — are apt to be in closer harmony than with CSAC and its rural-urban membership.

But when the need arises, all these county lobbying operations can be made to mesh into an impressive and apparently persuasive force. This was the case, McLaughlin recalls, in the fight last summer to defeat AB 1000, the tax-school finance compromise struck by Governor Ronald Reagan and Assembly Speaker Bob Moretti and originally drafted, McLaughlin says, by his own staff. (See *California Journal*, May 1972, p. 144, and page 3 of the Legislative Summary published in the September issue.) In such united fronts, the weight, wealth and skill of Los Angeles County's lobbying operation not uncommonly cast it in a leadership role.

Lobbyists for special districts — Robert J. Beckus and his two associates in California Advocates, Inc., represent one of the umbrella organizations in this field, the California Special Districts Association, which covers a large number of fire, park and recreation, and other special districts. Another is the Irrigation District Associations of California. IDA expects to change its name to the Association of California Water Agencies to reflect a scope of interest that now extends beyond irrigation to pollution control, sanitation and reclamation, according to Executive Director Robert T. Durbrow. Its 258 member districts account for about 75 percent of the water flow in California, Durbrow adds, and "about 10 percent of the legislation submitted [in a given session] affects our agencies one way or another". Working with him is John P. Frazer, counsel, who will succeed Durbrow next July, and Gary Queale, who edits *Western Water News*. IDA's legislative posture is about three-quarters defensive, Durbrow says, and it often finds itself opposed to legislation introduced on behalf of environmentalists, whose proposals it feels are inclined to neglect practicality or what it views as economic reality. "A great deal of our work is done through amendment," Durbrow explains.

Other umbrella groups with water-related interests are the California Water Districts Association, which retains one of Sacramento's best-paid lobbyists, former Assembly Speaker Gordon H. Garland (who also gets $25,000 a year to represent the Golden Gate Bridge and Highway District); the California Sanitary and Sanitation Districts Association, represented by W. Kenneth Norris; and the Mountain Counties Water Resources Association, whose members are eight northern California county water agencies. All told, the various water agencies can muster a force of 10 or more advocates if the occasion arises. In the present session, for example, such a united effort was mounted to support legislation to exempt the Eel River from designation as a "wild river", which was sought by environmentalists.

In the field of utilities, the California Municipal Utilities Association, which includes among its members the Metropolitan Water District of Southern California, the Long Beach Water Department, the East Bay Municipal Utility District and the Sacramento Municipal Utility District, is represented by Denny Valentine, who is paid a monthly salary of $1,900 plus expenses. The Metropolitan Water District and EBMUD also maintain their own salaried lobbyists — William H. Fairbank Jr., who represents MWD on a monthly salary of $2,350, plus expenses, and Rod Franz and John Plumb for EBMUD.

The Southern California Rapid Transit District verges on being a regional agency, and could as easily be classified with the Association of Southern California Governments as with the special districts. In any case, its lobbyist is Frank D. Vicencia, whom it pays $2,000 a month and expenses. (Vicencia also represents the League of California Milk Producers, a private organization.)

Public education — The lobbyists grouped here under public education do not constitute all of what is often referred to as the Education Lobby, a sometimes potent force that includes such professional organizations as the California Teachers Association, and such state agencies as the University of California, the State University of California, and the state Department of Education. Within the Education Lobby, nonetheless, is an important group of local government lobbyists financed by tax revenue. These include the staffs of three umbrella organizations: the California School Boards Association (three lobbyists), the Association of California School Districts (formerly the California Small School Districts Association, with headquarters in Santa Rosa, whose executive secretary claims only expenses), and the California Junior College Association. The CJCA disposes of a $200,000 budget raised from

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assessments levied against member districts on the basis of the size of their schools, according to Leland W. Myers, who heads a staff he describes as five professionals. About a quarter to a third of the budget supports lobbying, Myers estimates, since the association also publishes various periodicals and arranges conferences and other activities to share information concerning junior or community colleges.

As in the case of the state's major cities and counties, some of the largest school districts keep their own legislative offices in Sacramento. San Diego, Los Angeles and San Francisco all maintain individual lobbyists: James T. Healy represents both San Francisco Unified School District and the Board of Education, San Diego sends north Harry B. Ohlson on behalf of its school and community college districts, and Los Angeles sends Williams L. Lucas and Judith L. Larson (Los Angeles Unified School District), Shelly Wagner (Los Angeles Community College Districts), and Theopolis D. Kimbrough joins Lucas as necessary on behalf of the Board of Education.

Law enforcement — Local law-enforcement agencies have merged their legislative representation in the California Peace Officers Association, a management-level association comprising district attorneys, police chiefs and sheriffs. Its member groups are the California State Sheriffs Association, which includes the sheriffs of the 58 counties, the California District Attorneys Association, of which 25 of the counties' district attorneys are members; and the California Police Chiefs Association, which includes about 350 of the state's 400 chiefs.

CPOA, which once reportedly counted among its staff retired U.S. Chief Justice Earl Warren, then a deputy district attorney from Alameda County, was formed in 1921. Its five-member lobbying team is headed by Carl W. Anderson, an Alameda County deputy district attorney who sometimes appears on behalf of the District Attorneys Association. His associates this session are Albert E. LeBas, chief deputy of the Los Angeles County Sheriff's Office, Charles (Pete) Gross, a commander in the L.A. Police Department, Clarence Moore, a lieutenant in the Santa Clara County Sheriff's Department, and John Eustus III, legal affairs officer in the Sacramento Sheriff's Office.

The association's legislative interest focuses on the Penal Code, and law enforcement generally. (The line officers have formed their own group, the Peace Officers Research Association of California, to lobby bread-and-butter issues, with their dues deducted from salaries.) CPOA also sponsors its own legislative program (most of which was stopped this year, Eustus says, in the Assembly Committee on Criminal Justice). This session's bills included legislation regarding electronic surveillance, restoration of the death penalty, and reduction of juries from 12 jurors to six, in the case of misdemeanors.

Miscellaneous — Finally, a number of local government agencies defy classification, either because of their tentative beginnings, as in the case with the Association of Bay Area Governments and the Southern California Association of Governments, or because of their hybrid governmental structure, as in the case of redevelopment agencies and such poverty-law bodies as California Rural Legal Assistance and the Western Conference on Law and Poverty.

The regional government groupings, ABAG and SCAG, are curious hybrids indeed. Voluntary associations of the local governments in their respective areas, they were created by their members' recognition of overriding regional problems, mostly in urban planning, that resisted solution by city, county and state agencies. Moreover, the federal government encourages regional groupings in the apportionment of funds for urban planning studies. ABAG and SCAG, as hybrids, sometimes are found holding legislative positions that differ from those of some of their member governments. A case in point was a proposal last year to create a regional governmental planning agency for the nine-county San Francisco Bay Area (BARO). Many local government agencies and the League of California Cities opposed the legislation because it would create an agency not entirely controlled by local officials (in contrast to both ABAG and SCAG, which are). Backing the bill, however, was ABAG and its contract lobbyist, Robert Beckus. (See *California Journal*, November 1971, p. 300.)

The many redevlopment agencies in California constitute something of another special case. The agencies so far have not organized a lobbying effort, though this situation may change soon. A recently formed informational group called the California Center for Community Development, whose 60 member agencies include San Francisco and Los Angeles, expects to employ a legislative advocate starting with the 1973 Legislative Session. Until that is done, however, only the Redevelopment Agency of Sacramento sends someone across the street to keep an eye part time on legislation of interest to it.

In the case of the poverty-law organizations, both San Francisco-based California Rural Legal Assistance, which specializes as its name indicates in the legal problems of the rural poor, and the urban-oriented Western Conference on Law and Poverty in Los Angeles maintain legislative offices in Sacramento. The four attorneys, three from CRLA, share offices and coordinate their lobbying activities, according to CRLA's directing attorney, Edgar A. Kerry. Their aim, Kerry says, is to try to identify those legal problems turned up by field attorneys that lend themselves to legislative solutions. Legislation relating to garnishment and attachment proceedings signed into law this session, for example, eliminated the need for CRLA to litigate 20 to 30 cases that had come to the attention of CRLA's nine regional offices. Kerry explained. No funds are available to the

Legislative Summary

Extra copies have been printed of the 12-page interim legislative summary which appeared as an insert in the September issue. The summary provides an overview of the accomplishments, failures, and pending business of the recessed 1972 session.

Copies of the summary are available for purchase by groups and individuals. The cost is: 1-25, 15¢ each plus 15¢ postage and handling per order (payment must accompany your order); 26 and over, 10¢ each (if you send payment, we will cover postage and handling; if you prefer to be billed, we'll add the cost of postage and handling). Address orders to California Journal Legislative Summary, 1617 - 10th Street, Sacramento, California 95814.

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poverty-law lobbyists to entertain legislators with other than the merits of their case, he adds.

Interlocking interests

Viewed once again as an ensemble, a local government lobbying force, these 60 or so legislative advocates constitute a major element of the Sacramento lobbying corps, which spends more than one million dollars a session to influence legislation on behalf of nearly 700 clients. Some of these local government lobbyists — McLaughlin of L.A. County, for example, or Gordon Garland as a free-lancer handling public accounts — are among the capital's biggest spenders. And there is a clear pattern of interlocking interests — in county and municipal government, municipal utilities, water districts and law-enforcement agencies, among others — that can, when the occasion arises, produce a lobbying force far more powerful than a listing of the individual lobbyists might suggest.

Yet, despite the fact that such local government lobbies go back to the early days of statehood, something curious lingers about the phenomenon. Is it the idea of one set of elected officials hiring someone to help persuade other elected officials to act on behalf of one set of taxpayers over another? It may be, simply, that legislative advocacy itself tends to be overlooked as the governmental institution that it is, along with its function of giving coherent voice to conflicting demands.

California Government & Politics Annual

The 1972-73 edition of *California Government and Politics Annual* has just been published. Designed primarily for classroom use, the 100-page booklet consists of reprints of articles from the *California Journal* selected to provide the student with very recent material to supplement a regular text in such high school and college courses as introductory government, special problems, state and local government, and legislative process.

Previous editions of the *Annual* have been well received by students, teachers, and reviewers. The price for a single copy of the *Annual* is $2.25 prepaid. We will be glad to send a complimentary copy to any high school or college faculty member who requests one on school letterhead for consideration for possible adoption.

It Was Said...

"The Constitution envisions that democracy includes the right of the minority to dissent in an orderly fashion. Democracy also is the right of the minority to attempt to become the majority. And a constitutional democracy recognizes the right of the minority to be protected from the arbitrariness or, in some instances, the tyranny of the majority. When forces within our system would abridge these rights, the court must intervene and protect those who have proved unable to protect themselves.

"In this context, judicial review of legislative acts may run counter to the will or the wish of the majority, but to say that judicial review is undemocratic is to ignore fundamental rights guaranteed to all, including the members of the minority."

. . . *by California Chief Justice Donald R. Wright, writing in the September* California Law Review.

"Most people don't know grits from granola."

. . . . *by Assemblywoman March Fong, explaining to to a radio audience the need for controls over labels on organic food.*

"Most of the club's longterm members originally joined to participate in outdoor activities. Most of the more recent members joined to support or participate in conservation activities."

. . . *by the* Sierra Club Bulletin, *commenting on results of a survey of its 140,000 members.*

We can agree that government is too big, that it is pervasive and achieves far too little [but] . . . if what we're doing isn't resulting in the best of all possible worlds, we should then be asking ourselves how to do a better job rather than turning away in disgust.

We have to be willing to accept the fact that the only choices open to us may be tough ones. We've got to be willing to set objectives and fund them properly. We must have the will to abandon programs that have been around for a long time if they're no longer useful.

If the minority view advocated by our young people weathers the storm of rebuttal, why shouldn't it become the majority view?

. . . *by Assembly Speaker Bob Moretti, addressing the graduating class of San Fernando Valley State College on the question, "Is government worth saving?":*

"There is probably truth in the assertion that open meetings, discussion, and action reduce in some sense the efficiency of, say, a city council. But efficiency at what — misleading the public? In any case, absolute efficiency has never been the claim of Democratic government."

. . . *by Senator Arlen Gregario, in a report to constituents.*

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Reaching the Sea Around Us

Interests Clash Over Coastline Access

By MICHAEL FREED

One of California's most precious resources is its magnificent coastline, which runs from the dark bluffs and rocky tidepools near the Oregon border 1,072 miles south to the broad terraces and sandy beaches above the Mexican border. In theory, all of this coastline is either owned by the public or in private ownership subject to a public trust, from mean high tide to three miles out to sea. But, of course, such ownership is greatly limited in value where there is no public access to the tidelands, and this is true for nearly three-quarters of California's coastline.

According to a recent state report, 654 miles, or 61 percent, of upland (above mean high tide) shoreline is in private ownership. The remaining 418 miles, or 39 percent of upland shoreline is publicly owned, but the federal government owns 155 miles of this, of which nearly 100 miles are set aside for military installations, Coast Guard stations, and lighthouses, which are normally closed to the public. This leaves 263 miles, or only 25 percent of the total, owned by the state (200 miles), counties (34 miles), and cities (29 miles). And of the state's 200 miles of upland coastline, approximately 30 percent is inaccessible to the public because of intervening private property and wilderness areas.

Thus it would seem that Californians have gone a long way toward denying themselves one of the resources they value most. Yet it is not quite that bad. Not only are private landowners prohibited from blocking public access laterally along the tidelands and from impeding the public's right to navigate upon sloughs and waterways which penetrate public property, but, more importantly, many private landowners permit the public to cross their land to reach the shoreline. In fact, it is this matter of public access across private lands that has become the principal focal point for efforts to maintain and expand the public's opportunity to use the coast for recreational purposes. For if the public is to have access to a significant portion of the 654 miles of coastline in private ownership, it must be either by permission of the owners or through what is called implied dedication, a common law doctrine according to which the public under certain circumstances may gain the right to use private property.

Gion and Dietz

The whole question of public use of private lands was brought into prominence in 1970 when the California Supreme Court ruled in two separate cases — *Gion v. the City of Santa Cruz* and *Dietz v. King* — that the old common law doctrine of implied dedication can be applied not only to roadways but also to shoreline and beach use. In essence, the doctrine is that the public can obtain a permanent right to use private land if it is shown either that the owner has aquiesed in the land's use "under circumstances that negate the idea that the use is under a license", or that the public has openly and continuously used the land for a certain period of time. In *Gion*, the court ruled that an implied dedication of privately owned beach lands had occurred because the public had used the land "for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so and without objection being made by anyone."

Thus the court established five years as the necessary period of public use. It also put the burden of proof squarely on the private landowner with these words:

> We will not presume that owners of property today knowingly permit the general public to use their lands and grant a license to the public to do so. For a fee owner to negate a finding of intent to dedicate based on uninterrupted public use for more than five years, therefore, he must either affirmatively prove that he has granted the public a license to use his property or demonstrate that he has made a bona fide attempt to prevent public use. Whether an owner's efforts to halt public use are adequate in a particular case will turn on the means the owner uses in relation to the character of the property and the extent of public use.

Prior to this decision, recurrent use of private land by the public to gain access to the coastline was presumed to be by license (that is, by consent of the landowner) and did not create a public right to the use of the property. *Gion* and *Dietz* changed all that, however, by stating that if the public uses private beach areas continuously for five years, without permission and without significant objection by the owner, a public easement for recreational purposes is created. In *Gion*, the easement was assigned to the City of Santa Cruz on behalf of the public; in *Dietz* no easement holder was designated, but presumably Mendocino County assumed responsibility for maintaining the easement.

Reaction

The reaction from landowners along the coast and elsewhere was predictable. Many who had allowed unrestricted public passage over their lands immediately put up fences along the mean high tide line and along roadways in an effort to protect their ownership rights.

Michael Freed, a senior at UC Santa Barbara majoring in Political Science, is also chairman of the Shoreline Access Committee in Santa Barbara County.

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Moreover, private landowners elsewhere in the state who had allowed the public to use their unfenced lands for recreational purposes threatened to close them to public use if there was any reason to believe that the *Gion* and *Dietz* decisions might be read to apply to inland property, as well.

Some real estate interests charged that in *Gion* the court had itself violated the Fifth Amendment of the U.S. Constitution, which states that private property shall not be taken for public use, "without just compensation." Implied dedication, they said, takes away property rights with no compensation whatsoever. Those who favored the decision disagreed, saying that the exercise of public rights over private lands cannot be viewed properly as a "taking" of land. For example, when a property owner acquires title to a piece of real property, they pointed out, it is still subject to public rights. It matters not what the title insurance company says, nor what the deed states, the public right may have existed long before the owner acquired title. Public rights-of-way, they point out, are not usually written into deeds. Landowners are often upset to find their land subject to public easements they didn't know about, but this does not constitute a "taking" of the land, and therefore no compensation is required.

When this issue was raised several years ago in Oregon and Texas, the supreme courts of both states ruled that there was no constitutional conflict involved. In the Texas case, the Texas Supreme Court said that there was nothing in the State's "Open Beaches Bill" that takes rights from an owner of land. It merely furnishes, said the court, "a means by which the members of the public may enforce such collective rights as they may have legally acquired by reason of dedication, prescription, or which they may have retained as a continuous right."

Proponents of the *Gion* decision also say that a landowner had only to follow Section 813 of the Civil Code and record that he was granting permission for the public to use his land, thus negating the *Gion* decision and "saving" his land. Section 813 states, in part: "The right of the public or any person to make any use whatsoever of the above described land or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed, or dedication) is by permission and subject to control of the owner." A related provision, Section 1008, permits the landowner to accomplish the same thing by posting signs saying that he is granting permission for the public to use his property. However, according to Blair Reynolds of the California Land Title Association, prior to *Gion* it was believed that there was no need to so record or post one's land, and any landowner who asked a real estate attorney what he should do to protect himself was probably told that he didn't need to do anything.

Questions raised

Nevertheless, it is clear that the *Gion* decision raised some important questions regarding how landowners can protect themselves without simply cutting off public access to many coastal areas and how local government should respond to the closure of private lands along the coastline where implied dedication might be established in the courts.

The first question was resolved in part with passage of SB 504 (Lagomarsino) in 1971. In its original version, SB 504, introduced at the request of the state Chamber of Commerce, provided that regardless of present provisions of the law regarding licensing and posting of consent by the owner, no use by the public of privately owned land shall ever come to confer on the public a vested right. In effect, the bill proposed to eliminate prospective application of implied dedication to all private lands in California. Even though the Sierra Club and the Planning and Conservation League opposed the bill in the Senate, it passed that house with only minor changes, backed by the Reagan administration and publicized as a means of encouraging private landowners to allow public recreational use of their lands without loss of their property rights. It was not until the bill was in the Assembly that opponents were able to gain a compromise. That compromise was insertion of an amendment stating that to prevent implied dedication of coastal property that lies within 1,000 yards of mean high tide, while permitting its use, it is still necessary for the landowner to file with the

COAP RECOMMENDATIONS

The recently published Comprehensive Ocean Area Plan, which was prepared, at Governor Reagan's request, over the past three years under the supervision of the Director of Navigation and Ocean Development, contained the following recommendations regarding public access to the shoreline:

"1. No public or private coastal development should unreasonably deny the public access from state or local highways to state tidelands of high recreational value or prevent public access to the shoreline.

"2. A public easement at least 100 feet in width should be provided wherever possible between the high tide line and private developments are initiated in undeveloped areas, in order that lateral public access can be maintained along the shoreline. This requirement may be modified, as necessary, in areas where public safety, site security or other unusual circumstances exist.

"3. In addition to road, walk, or parkway easements required to be provided by law, other similar access should be acquired by the state and local governments to provide recreational access to the shoreline wherever feasible. Accessways should be so located and controlled as to prevent concentrations of use pressures that would degrade the environmental qualities of the coastal area, create unnecessarily high operational costs, or create substantial threat of trespass on adjacent lands.

"4. Federally owned shoreline should be developed in a way that provides for public access to the shoreline for recreational purposes while preserving, as much as possible, the natural environment of the coastal management zone. Where mutually beneficial, agreements should be made between the Federal Government and local public or private agencies for developing and managing the federally held areas of potential recreational development."

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county recorder a statement that he is granting the public license to use his lands for specified purposes.

Attorney General Evelle J. Younger took an active interest in the bill, not opposing it but suggesting that the objectives of the measure could be achieved "by alternatives far less drastic." One of these alternatives was a two-year moratorium during which an owner could permit public use of his land without fear of jeopardizing his title. During this period, the Attorney General suggested, "a careful study could be made to determine whether a final abrogation of the doctrine would be in the public interest . . ." But with the opposition of conservation groups softened or eliminated altogether, SB 504 was enacted into law, substantially reducing the threat of implied dedication for noncoastal lands. As far as coastal lands (harbors, estuaries, bays and inlets) are concerned, SB 504 strengthened Civil Code section 813, and assured the efficacy of Section 1008, thereby assuring the landowner that if he records consent to use his property or posts it properly he will be protected. If the coastal landowner is not willing to allow public use of his property, however, he must enforce trespass laws; otherwise he may be subject to an implied dedication of his land.

Renewed attack

This year, however, there has been a strong effort to pass additional legislation that appears to be intended to eliminate the doctrine of implied dedication altogether. SB 742, authored by Senator George N. Zenovich, sharply restricts the application of the *Gion* and *Dietz* decisions as they relate to past public use of private property. The 1971 legislation, explained Zenovich in a letter to the *Sacramento Bee* in August, "only applied to current and future public use. The question still remained as to whether a property owner could be dragged into a court and be forced to produce evidence showing that there was no intention to dedicate his land to the public at some time in the past in order to keep his land from being so dedicated. Such evidence may be impossible to produce in cases based on past public use. My legislation would merely require that anyone claiming that private land should be dedicated to the public based on past public use bring into court evidence, not just allegations, to support that claim."

According to the Attorney General's Office, however, SB 742 actually goes beyond simply restoring pre-1970 conditions. SB 742 would apply even to situations involving consistent public use over a definite and specified line, whereas before 1970, landowners were protected (according to the court's decision in *Hihn v. The City of Santa Cruz*) only in the case of random or casual public use extending over the entire surface of an unenclosed and uncultivated tract. For example, according to the Attorney General's Office, had SB 742 been in effect at the time of the *Dietz* case, it may well have prevented not only the implied dedication of the beach property involved. but also the dedication of a dirt road that was well defined and had been used by the public for at least 100 years.

Fred Fisher of the Sierra Club has said of SB 742 that in his judgment, "if this bill passes, it will destroy significant public rights up and down our coast." And, William Holliman, assistant counsel for the League of California cities, has said that Zenovich's bill has "the practical effect of abrogating the doctrine of retroactivity and eliminating the public's present lawful right to use much property." The measure, said Holliman "would . . . create chaos with respect to numerous actions now pending."

The bill, which, like SB 504 before it, is sponsored by the state Chamber of Commerce, has passed the Senate and has been heard by the Assembly Judiciary Committee. It has run into strong opposition in that committee, however, most notably from the Attorney General's Office, which is represented by Assistant Attorney General Jay L. Shavelson. Committee chairman Charles Warren says he has strong reservations about the measure, and, unless Zenovich is willing to accept major amendments, it appears that the bill is unlikely to get out of committee when the Legislature returns from recess in November.

Another tack

Another measure, SB 82 (Deukmejian), has been introduced at the request of the California Land Title Association. This bill, it is claimed, will answer several questions left unanswered by the *Gion* decision, such as: who is responsible for the public safety and cleanliness on a public easement? who can release the public's right to the easement? and against whom can a landowner bring an action in order to quiet title or define his title. SB 82 requires the Court to name either the state or a local entity to be responsible in all cases of implied dedication, and gives the dedicatee power to alter the boundaries of the property, to relocate it, to improve it, or even to abandon it. The bill also provides that the easement shall be extinguished if the public has not used it for a period of five years prior to the effective date of the act and extinguishes as of January 1, 1972, implied dedication on land that was zoned residential and had four homes or less on it.

The Sierra Club led the opposition to SB 82 in the Senate Local Government Committee, attacking the provision giving power to local government to relinquish a claim by agreement, a procedure, it said, that "lacks adequate safeguards to double-check the determination by local government as to the existence of an implied dedication . . ." The club also opposed that section of the bill which terminates an easement that is not used for five years or more prior to the effective date of the act. Further opposition came from the League of California Cities and various local governments, which said that under the proposed law a public entity would incur excessive responsibility for maintenance and care of property as a result of a judgment finding an implied dedication. Jerome Johnson, of the County Counsel's Office of Los Angeles charged that the bill would be especially costly to the County of Los Angeles because it "might have the effect of requiring the county to maintain beaches and other recreational properties that the county may not wish to operate and maintain for policy reasons," and because "enactment of the proposed legislation would undoubtedly encourage a multiplicity of quiet title actions which the county would be required to defend . . ." Los Angeles County would be particularly susceptible to this type of litigation, he said, "because of the great number of privately owned parcels of land fronting the ocean beach, especially in the Malibu area."

The bill was defeated by one vote in the Senate Committee, with Senators Behr, Gregorio, Petris, Marks, and Rodda voting against it, and Senators Bradley, Song, Nejedly, and Coombs voting for it. Thus

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the doctrine of implied dedication of coastal lands, as handed down by the California Supreme Court in *Gion* and *Dietz*, so far remains intact.

Expanding beach areas

Article XV, Section 2, of the California Constitution directs the Legislature to protect public access to the navigable waters of the state in these words:

> No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor bay, inlet, estuary, or other navigable water in this state, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give *the most liberal construction* to this provision, so that access to the navigable waters of this state shall always be attainable by the people thereof (emphasis added).

Proponents of greater public access to the coastline have interpreted this to mean that the Legislature should enact laws to protect, if not expand public access to the shoreline everywhere. In 1970, after three years of trying, they finally won passage of one important piece of legislation, AB 493 (Dunlap), which provides that no subdivision map may be approved for a development fronting on the coastline which does not provide reasonable public access "from public highways to the land below the ordinary high water mark on any ocean coastline or bay shoreline within or at a reasonable distance from the subdivision."

This was an important victory, although several counties refused to enforce the new law until compelled to do so by court action. This year, a further effort has been made to clarify and strengthen the new law. AB 2132 (Dunlap) extends from one to three years the period in which dedication of public access routes through a subdivision must be accepted by a city or county, after approval of the subdivision map, or be abandoned; AB 2133 (Dunlap) extends the provisions of the subdivision law to mobilehome parks; and AB 2134 extends those provisions to parcels of land larger than 40 acres (which are not covered by the Subdivision Map Act). All three bills were passed and signed into law by the time the Legislature recessed in August.

Dunlap has been unable, however, to gain passage of legislation to require cities and counties to prepare and maintain an inventory of lands and coastline access routes that have been dedicated to the public. Bills to accomplish this were defeated in the Assembly in 1970 and 1971 as a result of strong opposition from the cities and counties. Several counties have nevertheless begun such studies on their own as an aid to land-use planning and the expansion of public access to beaches.

County actions

Among the most active counties in this regard have been Marin, Orange, San Diego, and San Mateo Counties, and the City of Torrance. They have begun inventories of beaches and access routes dedicated to the public, adopted policies guaranteeing beach access, and participated in litigation on behalf of the public right to beach access. The City of Torrance, for example, is presently involved in 10 lawsuits involving implied dedication. Deputy City Attorney Jack Allen, who is representing the city in these cases, says that Torrance has filed cases alleging *Gion* easements "in every beach area where there is undeveloped and vacant beach property." He contends that two million people a year use these impliedly dedicated beaches. In the most important case, *City of Torrance v. Oscar Burke et al*, Allen says that about 700 persons signed declarations that they had used the beach for at least five years, and some said they had used the beach as far back as the 1920's.

Other local governments have become involved in implied-dedication litigation originated by private individuals suing on behalf of the public. In Marin County, for example, the county joined in three lawsuits involving implied dedication that were initiated by private individuals. Richard Godino, assistant county counsel, said that it was the judge who encouraged the county to enter one important suit. "He felt it would be healthy for some government agency to involve itself," said Godino. "With the county involved, the landowner would probably be able to settle the case more simply, and be assured of beach maintenance if he lost the case."

Less access in south

Ironically, however, most of the major examples of positive local government involvement with beach access are to be found in the northern half of the state, while the major problem of obtaining adequate beach access exists in the southern part of the state — that is, from Point Conception to the Mexican border. Santa Barbara County, for example, has the greatest mileage of sandy swimming beaches (83.5 miles) of all of California's counties, but it also has the fewest miles of accessible public beaches of the southern counties. And Santa Barbara County has reacted negatively to attempts to give the public greater access to the coast through the application of implied dedications.

In one pending case, *Adams v. Bixby Ranch*, Santa Barbara County is named as a defendant due to its refusal to maintain the land, should a dedication be determined by the court. The county argues that a special group of persons, surfers, and not the general public, is involved, so that the *Gion* decision is inapplicable. Robert Sharpe, the attorney handling the case for the surfers, naturally feels differently. "The people who have used this beach were not an organized group," Sharp said. "In fact, only one or two of the individuals named in the suit even knew one another." Thus, it is Sharpe's view that although these individuals named in the suit were surfers, they nevertheless were members of the public, rather than a special group. Sharpe also argues that the public considered the path to be owned by the county since it was adjacent to a county park; hence, it is his contention that the county should maintain the beach once the public's right to use it has been established.

On the other side, John Mitchell of the Santa Barbara County Counsel's Office, claims that "it is in the public interest to oppose this dedication." No dedication exists, he says, because the landowner intermittently blocked public access. Anyway, says Mitchell, to reach the beach, surfers have "only to walk from the county beach." Sharpe argues, however, that a person would have to walk approximately one mile, and that the way is impassable during high tide. It is now up to the court to decide whether the county's objections are legitimate, or if, as Sharpe contends, this is a typical *Gion* case.

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Adams is but one instance in which Santa Barbara County has confronted the question of implied dedication. In April 1972, a group of local citizens went before the Board of Supervisors with a petition signed by more than 2,000 residents urging the board to instruct its planning department to take an inventory of dedicated beaches and to instruct the county counsel to take whatever steps are necessary to reopen beaches recently closed to the public, as well as to pass an ordinance favoring greater beach access. After one month, the citizens' group amended its petition, substituting for its first proposals a request that the board instruct its planning department to survey a two-to-six-mile section of the coastline to determine if any implied dedications had occurred, and to complete an inventory that the group presented to the board. The board rejected both pleas, however, and Supervisor Dan Grant apparently expressed its sentiments when he said, "This issue belongs in the courts, not with the Board of Supervisors." The beaches in question remain closed, and the board remains adamant in its refusal to seek to maintain or expand public rights of access to the coast through the application of implied dedication.

Other states lead

Thus, California continues to lag behind several other states in which the public's right of access to the coast is being pursued much more aggressively. Perhaps the outstanding example is Oregon, which is now a party to seven law suits aimed at protecting and expanding public access to its coastline. The present program in Oregon is intended to provide beach access, including a public road, parking, and restrooms, every three miles along the coast. The program is financed largely from gasoline taxes.

Such a plan would undoubtedly be impractical for California, but there is a growing number of citizens who believe that the state and the counties must begin to act much more aggressively and directly on behalf of the general public up and down the coast. Proposition 20 on the November ballot is one indication of their impatience; lawsuits to apply the doctrine of applied dedication are another. Perhaps the Legislature or the courts will limit application of the *Gion* decision in the future, but that is unlikely to deter those who think it is high time that public agencies begin to reverse the great giveaway of public lands that occurred in the early days of the state and that led one delegate at the Constitutional Convention of 1879 to observe:

> If there is any one abuse greater than any other that I think the people of California have suffered at the hands of their lawmaking power, it is the abuse that they have received in the granting and disposition of lands belonging to the state . . . Swamplands, tidelands, and marsh and overflow lands have been taken in such quantities that now the people are hedged off entirely from reaching tidewater, navigable water or salt water.

Refuge from Urban Sprawl?

According to the *Los Angeles Times*, Southern California home-buyers will be able to find "refuge from the 'environmental compression of urban sprawl' " in a new 300 homesite, 1,316-acre development of "rambling country estates" in Riverside County. Many of the 2½ to 10 acre "estates" will incorporate natural avocado or citrus groves, the *Times* reported.

LA and SF Consider Limiting Population

After California's population edged past New York's in 1970, the cheering for ever-rising population figures stopped as Californians began to recognize the environmental problems rapid growth had produced. But growth continues in the state's major urban areas. Although the state's overall rate of growth has recently fallen below the national average of 1.3 percent for the first time in 70 years, according to the U.S. Bureau of the Census, both the Los Angeles and San Francisco Bay areas continue to grow at faster rates. This situation has evoked few expressions of civic pride, however.

In San Francisco, the executive committee of the Association of Bay Area Governments approved a policy statement to the effect that the population in the nine-county area should not exceed 5.5 million in 1980, an increase of about one million people since 1970. This will represent a 1.7 percent annual rate of growth, compared with the 2.4 percent rate of the 1960s. The proposed policy will be considered by ABAG's 92-member Assembly on November 10th. If approved, its implementation will require further research. "Our hope," explained San Jose Councilwoman Janet Gray Hayes, "was not to become the Los Angeles of the north."

Los Angeles, meanwhile, also took steps to check its sprawling growth. ABAG's counterpart, the Southern California Association of Governments, considered a proposed Regional Development Guide predicated on slowed population growth over the next 20 years (though still exceeding the national average). Tougher still was a proposal to limit construction contributing to air pollution in the six-county South Coast Air Basin by invoking a system of permits. The proposal bans equipment — cement and power plants and chemical factories, for example — that produces more than 100 tons of pollutants a year, if the pollutants inhibit compliance with federal air quality standards. The plan won the approval in principle of the state Air Resources Board. Its implementation, predicted Robert L. Chass, head of the Los Angeles County Air Pollution District, will amount to a "no-growth policy", an assessment concurred in by ARB member R. Robert Brattain. "I don't think there's any way to sugar-coat it," Brattain said. "This is what it means, and the people better face it."

The basin permit plan is to be part of a California "action plan" to meet by 1977 federal standards set by the Environmental Protection Agency, though there is some question whether it is stringent enough to win EPA approval, given the magnitude of pollution problems in the South Coast Air Basin. Chass, who expects to submit an alternative proposal, criticized the present permit plan for ignoring motor vehicles, an oversight he likened to "swatting gnats rather than getting after the monster."

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Ballot Propositions

1972 General Election

In this issue we complete the presentation of a description and brief analysis of all 22 state propositions on the November ballot. In the August issue we covered Proposition 15 (state employee salaries), Proposition 16 (Highway Patrol salaries), Proposition 18 (obscenity), and Proposition 22 (agricultural labor relations). The September issue covered Proposition 1-8. On the following pages we deal with the remaining ten propositions. All 22 ballot proposition reports have been reprinted in a 28-page booklet which gives the voter objective information essential to an informed judgment of the merits of each measure (see note on page 309).

9 BOND VOTE FOR STRUCTURALLY UNSAFE SCHOOL BUILDINGS.

Permits majority, instead of two-thirds, vote for passage of school bond issue for structurally unsafe school buildings. Financial impact: No direct cost, but increased bonded debt anticipated.

Public school districts may issue general obligation bonds, repayable from district tax revenues, for the construction, remodeling, and repair of school buildings, provided that the bonds are approved by two-thirds of the district voters who vote at a bond election. The two-thirds requirement is generally considered to be a device to discourage districts from accumulating excessive debt, although state law currently prohibits districts from issuing bonds in an amount exceeding five percent of their assessed valuation.

This amendment eases the bond-vote requirement by permitting a simple majority rather than two-thirds for approval of school bonds to raise money "for the purpose of repairing, reconstructing or replacing public school buildings determined, in the manner prescribed by law, to be structurally unsafe for school use . . ." Although the term "structurally unsafe" is not defined, the measure is intended to make it easier for school districts to strengthen or replace buildings failing to meet state standards for earthquake resistance.

The Field Act

In 1933, following the Long Beach earthquake in which there was severe damage to many of that city's schools (several hours after classes had been dismissed), the Legislature enacted a law, now known as the Field Act, that requires all schools to be constructed according to earthquake-resistance standards drawn up by state engineers. Six years later, the act was amended to require all school buildings constructed prior to 1933 to be brought up to the new standards.

Although several districts began a systematic program to comply, most did not, taking the position that they did not need to do anything about buildings that had not in fact been inspected by structural engineers and found to be unsafe. This policy was not abandoned until 1966, when the state's Attorney General said that in his opinion school boards were likely to be held responsible for unsafe buildings, in the event of an earthquake, whether or not they knew the buildings to be unsafe in advance.

In the wake of this opinion, the Legislature directed the state's school districts to have a structural examination made of all of their buildings constructed before 1933. Every building not meeting Field Act standards, the Legislature declared, must be either strengthened as necessary or abandoned by June 30, 1975. In 1971-72, according to the Department of Education, 226 of the state's 1,400 school districts were still using 1,593 buildings that failed to meet Field Act standards. Most of these districts have adopted a plan to repair, reconstruct, or abandon their noncomplying buildings, but only 22 of them reported having sufficient funds to carry out their plans. District estimates indicate that the total statewide cost of replacing or strengthening noncomplying buildings will be about $635 million.

The shortage of funds is due in many cases to the

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failure of many bond issues, intended in whole or in part for Field Act compliance, to receive the necessary two-thirds approval. Two large bond issues for the Los Angeles City schools failed last year, for example, despite the fact that one received a 57 percent yes vote and the other failed to get two-thirds approval by only one-third of one percent. The Legislative Analyst has reported that in 1970-71 school districts held elections for a total of $450 million in construction bonds (for all purposes), but were successful in winning the required two-thirds majority for only $50 million. Of the $400 million in bonds that failed, $350 million received at least a majority vote of approval.

In the absence of a reduction in the bond-vote requirement for this purpose, say proponents of Proposition 9, many districts will be unable to meet the 1975 deadline. The financial obstacle for these districts has been considerably eased, however, by voter approval last June of $350 million in state school building aid bonds. Up to $250 million of these bonds may be earmarked for aiding districts to comply with Field Act standards. In addition, $30 million has been set aside from state income-tax revenues to be used either to supplement regular school building aid loans for districts with noncomplying buildings or to provide direct grants to the most hard-pressed of such districts.

Governor's opposition

Proposition 9 is opposed by Governor Reagan and several statewide organizations, including the California Taxpayers Association. The Governor bases his opposition on the belief that the two-thirds vote requirement should not be changed for any reason at a time when voters are increasingly concerned about high property taxes. School district bonds must, of course, be paid for out of district property taxes, ordinarily over a 20-year period. The California Taxpayers Association argues that the need for additional funds to bring all school districts up to state standards has been exaggerated — that $475 million of the $635 million total is available now — and that local school districts have already accumulated long-term indebtedness "to gigantic magnitudes."

Senator Clark Bradley, who wrote the opposition ballot argument, says, "I do not contest the need to replace some earthquake-prone schools, but I do protest sole reliance on the property tax for this purpose. Proposition 9, by easing the passage of school bond issues, places such sole burden on the property tax, since school bonds are 100 percent repayable from the property tax." If the state bond funds for school construction loans (which must also be repaid in part from local property taxes) are insufficient to meet the full need, Bradley says, "some similar alternative to the property tax should be developed and used for this purpose."

Proponents of Proposition 9, who include Wilson Riles, the State Superintendent of Public Instruction, and Assemblyman Leroy Greene and Senator George Moscone, who carried the amendment before the Legislature, say that it is required "to guarantee the safety of California's school chidren," although they acknowledge that noncomplying buildings will have to be abandoned after June 30, 1975, unless the Legisature postpones that deadline. They also point out that those districts that do not already have bonds outstanding in an amount equivalent to three percent of their assessed valuation must vote additional bonds in order to be eligible for a state loan for the $250 million approved by a majority of the state's voters in June.

10 BLIND VETERANS TAX EXEMPTION. Permits Legislature to increase property tax exemption from $5,000 to $10,000 for veterans who are blind due to service-connected disabilities. Financial impact: Nominal decrease in local government revenues.

The California Constitution now authorizes the Legislature to grant an exemption from local property taxes to veterans who are residents of this state and have served their country in time of war. For such veterans generally, the exemption is limited to the first $1,000 of property owned and is available, with certain exceptions, only to those who own less than $5,000 in property. However, veterans who are blind as a result of their service may be granted an exemption on the first $5,000 of property they own, and veterans who have lost both legs may be granted an exemption on up to $10,000 in property.

Proposition 10 amends the exemption for blind veterans, raising the ceiling from $5,000 to $10,000, the same as for veterans who have lost both legs. The ceiling of $5,000 was set by vote of the people in 1966 (Propositon 9). In 1970, when the exemption ceiling for veterans who had lost both legs was raised to $10,000 and extended to veterans who live in cooperative housing projects, no change was made in the exemption for blind veterans. Proponents of Proposition 10 argue that this oversight should now be corrected.

The State Board of Equalization, which supervises local property tax administration, estimates that approximately 300 veterans are eligible and now take advantage of this benefit. According to the Legislative Analyst, approval of the increase will result in "an unestimated, but nominal, reduction in local assessed valuation, for which local governments would not be reimbursed by the state."

The amendment was approved without opposition by both houses of the Legislature, and no organized opposition has appeared since.

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11 RIGHT OF PRIVACY. Adds right of privacy to inalienable rights of people. Financial impact: None.

Section 1, Article 1 of the California Constitution reads as follows:

> "All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety and happiness."

Proposition 11 makes two small changes in this language. First, it changes the word "men" in the first line to "people" so as to remove any sexist connotation from this very first section of the constitution. Second, and most important from the point of view of the proponents of Proposition 11, it adds the word "privacy" to the list of inalienable rights, making the final line read "... and pursuing and obtaining safety, happiness, and privacy."

According to Assemblyman Kenneth Cory, who is the principal author of this amendment, "There are, at present, no effective restraints on the information [gathering] activities of government and business." As a consequence, says Cory, "the proliferation of government snooping and data-collecting is threatening to destroy our traditional freedoms . . . The proliferation of government and business records over which we have no control limits our ability to control our personal lives. Often we do not know that these records even exist, and we are certainly unable to determine who has access to them." The objective of the proposed amendment, he says, is to create "a legal and enforceable right of privacy for every California."

Opposition arguments

The chief opponents of this amendment when it was before the Legislature were Senators James E. Whetmore and Clark Bradley. They argued that the amendment is unnecessary because the constitution clearly makes no attempt to list all inalienable rights and because "it has always been recognized by the law and the courts that privacy is one of the rights we have . . ." They also charge, however, that "making privacy an inalienable right could only bring chaos to all government benefit programs, thus depriving all of us, including those who need the help the most."

This second argument reflects the principal contention of the opponents of Proposition 11; that is, that it may make it impossible to determine whether those who apply for welfare benefits actually need public assistance. "If a person on welfare has his privacy protected to the point where he need not reveal his assets and outside income," they ask, "how could it be determined whether he should be given welfare at all?" Such protection, they suggest, would not be fair, "either to the taxpayers who pay for welfare or the truly needy" who might be deprived of part or all the assistance due them because of aid to persons not really needing it.

The opponents suggest that the proposed amendment might lead the courts to declare unconstitutional the Reagan administration's recently activated program to run computerized comparisons of welfare recipients' reports of income and employers' reports for unemployment insurance purposes as a means of uncovering possible fraud. According to the Legislative Counsel, however, the amendment, if adopted by the people, is not likely to be held by the courts to circumscribe the disclosure of material "that by law becomes a part of public records where such disclosure is regulated by statute." The constitution contains no definition of privacy, the counsel points out, and "inasmuch as courts will give great weight to legislative interpretation of constitutional provisions . . . the effect of the proposal in question would be substantially influenced by any such legislative action." The same is true, says the counsel, of the other rights referred to in Article I.

It is nevertheless also true that the state cannot now infringe upon the right of privacy without a strong reason for doing so. "In approaching the concept of the right of privacy," the Legislative Counsel said in an opinion requested by Assemblyman John Stull, "the California courts have taken the view that although such right does not provide immunity from compliance with reasonable civil requirements imposed by the state in the interest of public welfare, and does not bar legislative control of acts inimical to the peace, good order, and morals of society, where there is a significant encroachment upon personal liberty, the state may regulate only upon showing a subordinating compelling interest." Both the State Supreme Court and the U.S. Supreme Court have referred to the need for government to show a "compelling" public interest to justify an intrusion into the privacy of citizens.

The author of the amendment seems to agree that the amendment will have little impact on the actions of state government in the absence of legislation specifically prohibiting certain actions as an unwarranted invasion of privacy. Assemblyman Cory and Assemblyman William Bagley carried legislation in 1971 that, among other things, would have authorized every person to read and copy any record, public or confidential, pertaining directly to him or her, and to correct or make additions to such records. The bill failed to get out of committee, but Cory has indicated that he may try again if Proposition 11 is approved by the voters.

Journal Binders

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12 DISABLED VETERANS TAX EXEMPTION.

DISABLED VETERANS TAX EXEMPTION. Extends tax exemption to disabled veterans with certain service connected multiple losses of limbs and blindness. Extends exemption to either surviving spouse. Financial impact: Nominal decrease in local government revenues.

This constitutional amendment authorizes the Legislature to extend the $10,000 property tax exemption for veterans who have lost both legs (see Proposition 10) to veterans who have lost an arm and a leg or who are blind and who have lost the use of either an arm or a leg. The State Board of Equalization estimates that there are approximately 700 veterans who will be eligible. According to the Legislative Analyst's cost estimate, if the Legislature enacts legislation to raise the exemption, it will cause "a small decrease in the taxable assessed value of property where the eligible veterans reside and a "small increase in the proportion of property taxes paid by taxpayers who do not receive this exemption. Because few exemptions will be claimed in any single jurisdiction, the revenue effect will not be noticeable."

Assemblywoman March K. Fong and Senator John W. Holmdahl, who wrote the ballot argument for Proposition 12, argue that there are "striking inequities in the present constitutional provisions" concerning disabled veterans. Those who have lost an arm and a leg in the service of their country are treated, in this case, as though they are not disabled, they note, and blind veterans who have lost either an arm or a leg receive no additional consideration for that fact. A vote in favor of Proposition 12, they say, "will convince our disabled veterans that we do . . . appreciate the personal sacrifices they have made on our behalf."

Needless to say, this amendment was unopposed in the Legislature and has aroused no organized opposition since being placed on the November ballot. The ballot pamphlet contains no opposing argument.

13 WORKMEN'S COMPENSATION.

WORKMEN'S COMPENSATION. Permits workmen's compensation award to be payable to state on death of employee without dependents. Allows use for additional subsequent injuries compensation. Financial impact: If implemented, would decrease state costs approximately $1,800,000 per year.

This amendment to the constitution was adopted by the Legislature and placed on the ballot on the recommendation of the Legislative Analyst, the Legislature's fiscal watchdog. Its purpose is to save the state approximately $1.8 million per year in payments under workman's compensation laws.

In California, an employee who is disabled by an injury "arising out of and in the course of" his or her employment is entitled to workmen's compensation benefits, which include medical treatment, temporary or permanent disability payments, and, if the employee dies and leaves dependent survivors, burial expenses and a death benefit of $25,000. These benefits are payable by the employer, commonly from workmen's compensation insurance. If an employee dies of an employment-related injury and leaves no dependent heirs, no death benefit is paid.

State law also extends these benefits to every employee with a preexisting permanent disability or impairment who suffers an employment-related injury which results in a permanent disability of 70 percent or more. In this case, however, the employer is responsible only for the portion of the permanent disability that resulted from the injury. The balance of the cost of the employee's benefits (for the preexisting disability) is paid from the Subsequent Injury Fund, which is financed from the state's general tax revenues in the General Fund. State costs for these benefits grew to $1.7 million last year and are expected to reach $2 million this year.

Proposition 13 amends the constitution to permit the Legislature to require that when an employee dies of an employment-related injury and leaves no dependent heirs, the $25,000 death benefit shall be paid by the employer to the state. The funds received by the state in this manner are to be used to help finance the state's share of the "subsequent injuries" benefits, thus reducing or eliminating this cost to the state's General Fund.

Other states

According to the Legislative Analyst, 26 other states now fund subsequent injury benefits totally or partially in this manner. The annual number of employment-related deaths in California has been approximately 725 in recent years. About 10 percent of these victims leave no dependents, which means that approximately $1.8 million in death benefits are not now paid. The Analyst argues that it is not reasonable that an employer should be relieved of an insurable liability simply because an employee has no dependent heirs. This money should be paid over to the state, he says, to support the cost of subsequent injury benefits, the purpose of which is to reduce the obstacles to the hiring of persons who have temporary or permanent disabilities.

Section 21 of Article XX of the constitution grants the Legislature "plenary power, unlimited by any provision of this Constitution to create, and to enforce a complete system of workmen's compensation . . ." The Legislative Counsel has advised nevertheless, that this proposed change cannot be effected by statute alone without express constitutional authorization.

There were no dissenting votes cast in either house of the Legislature in placing this measure on the ballot. Nor is there an opposing ballot argument. A similar amendment (Proposition 5) was rejected by the voters in 1962, however.

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14

TAXATION. Establishes property tax limitations. Requires state funding of welfare and education costs. Prescribes various state tax rates and vote requirements for increases and exemptions. Financial impact: A net ascertainable decrease in revenues to state and local government in excess of $1,233,000,000 per year.

Proposition 14 is the Watson Amendment, authored by Los Angeles County Assessor Philip E. Watson. Its purpose is to sharply reduce local property taxes by shifting the costs of education and social welfare from the local property tax base to the state tax base and by fixing absolute ceilings on local property tax rates for other purposes. These objectives are to be accomplished by amendments to the state constitution.

The principal provisions of the measure are:

(1) A ceiling of $1.75 percent of market value ($7.00 per $100 of assessed valuation) is fixed for property taxes for all purposes other than past or future bond issues or other long-term debt repayments.

(2) All costs of social welfare and Medi-Cal services are shifted to the state.

(3) All costs for operation of the community colleges and all costs for operating the public schools beyond those that can be met by a property tax rate of $2.00 per $100 are shifted to the state.

(4) Maximum tax rates for local government are fixed at $2 for counties, $2 for cities ($4 for the City and County of San Francisco) $.50 for intracounty special districts, and $.50 for intercountry special districts. If a local jurisdiction exceeded this limit in 1971-72, after deducting costs for social welfare and education to be transferred to the state, its 1971-72 tax rate shall be its ceiling until 1976-77, when it will have to drop to the standard limit for all similar units. These ceilings exclude tax rates for bond issues and other long-term debt.

(5) The state and local sales tax is raised from five cents to seven cents (plus one-half cent in the San Francisco Bay Area).

(6) Other state taxes on cigarettes, distilled spirits, corporate income, banks, insurance companies, and oil and gas are also increased.

(7) The newly enacted sales tax for local transportation, which is expected to yield $151 million in 1973-74, is repealed.

Table 1. State and Local Fiscal Effects of the Watson Amendment

(In Millions)

	1973-74
1. Increased State Costs	
Education	$1,629
Social Welfare	527
Medi-Cal	274
Tax exemptions and reimbursements	—204
	$2,226
2. Increased State Revenues	
Sales Tax	$1,328
Cigarette Tax	143
Distilled Spirits Tax	26
Corporate Franchise Tax	294
Mineral Severence Tax	108
All others (net)	48
	$1,854
3. Changes in Local Revenues	
Schools	—$ 771
Cities and Counties	
Transportation revenues	— 151
Cigarette Tax	+ 61
Special Districts	(unk.)
	— 861
4. Summary of State-Local Fiscal Effects	
Unfunded State Costs	—$ 372
Reduction in School Expenditures	— 771
Net Change in City and County Revenues	— 90
	—$1,233

Source: Legislative Analyst

According to the Legislative Analyst, property taxes in 1973-74 will average $11.60 per $100 of assessed valuation and will produce $7,363 million in revenue. Passage of the Watson Amendment is expected to reduce property taxes by $4.76 to an average of $6.84 per $100 (a 43.5 percent reduction) and the revenue produced by $3,201 million, to $4,162 million. State sales tax revenues, on the other hand, are expected to increase by $1,328 million and other state taxes by $526 million, for a total increase of $1,854 million. The difference between the $3,201 million reduction in local property taxes and the $1,854 million increase in state taxes is $1,347 million. According to the Legislative Analyst, this $1,347 million gap is explained by $204 million in state savings in payments to local government, $372 million in unfunded state costs, and a $771 million reduction in expenditures for schools. In addition, there is expected to be a $90 million loss in revenue to cities and counties and an unknown revenue loss to special districts.

A comparison of tax reductions and tax increases for each major type of taxpayer (see Table 2) indicates, according to the Legislative Analyst, that homeowners may receive a net benefit of $68 million in reduced taxes, provided that there is no additional tax increase to maintain school expenditures and fund state programs at current levels. Renters receive no direct tax reduction and will benefit only to the extent that landlords pass on their property tax savings. Owners of nonresidential property — business, industry, and agriculture — will be the main beneficiaries, the Analyst believes, with a net tax savings of $868 million. In each case, however, such savings are dependent upon whether or not the reduction in school expenditures is allowed to stand, which is not very likely.

Rigged estimates?

Watson, it should be noted, disputes many of these figures and has charged that Legislative Analyst A. Alan Post has "deliberately rigged" his estimates to help defeat the measure. Post is an employee of the Legisla-

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ture, Watson has pointed out, and, he says, "the legislators feel, and justifiably so, that the initiative is a criticism of their inactions, and it is." There will be no reduction in expenditures for schools, he says, because the opponents have made a "gross error" in estimating school enrollment and have overlooked $300 million in federal revenue for schools and the fact that the measure permits any jurisdiction that "needs more funds than can be provided under the Watson limitation . . . a five-year 'grace period' in which to find additional non-property tax sources of revenue — or cut expenses." Districts that need more operating support "have five years to go to the Legislature for such money." The Legislative Analyst's figures on school support do include federal funds, however, and the five-year "grace period" for jurisdictions that exceed the $2.00 tax rate ceiling apparently does not cover school districts.

According to Watson's figures, a couple with an annual income of $8,000 and a house valued at $20,000 will get a property tax saving of $212, offset in part by a sales tax increase of $46, for a net tax savings of $166. For a couple with $20,000 in income and a $50,000 house, the property tax reduction is $587 and the net tax saving $501. Watson's estimate of the savings to homeowners appears to substantally exceed that of the Legislative Analyst, in large part because Watson uses a lower figure for the sales tax increase and does not take into account increases in cigarette and liquor taxes.

Supporters of the Watson Amendment include the California Real Estate Association, the Farm Bureau Federation, the Cattlemen's Association, and the State Association of County Assessors. It is opposed by the Reagan administration, the Republican and Democratic leadership of the Senate and Assembly, the League of Women Voters, the State Chamber of Commerce, the California Junior College Association and many other educational organizations, the California Peace Officers' Association, and other groups.

Assemblyman William Bagley, former chairman of the Assembly Revenue and Taxation Committee, has called Proposition 14 "a cruel hoax on California's voters." If it is adopted, he says, the school budgets all across the state will be cut back, mass transit funds would be "obliterated", and local government, forced to live within the "artificial" tax rate limits imposed by the Watson proposal, "would cease to respond to local problems." Bagley and others concede the fact that California needs tax reform, but charge that the Watson Amendment is like "curing a nosebleed by cutting your throat."

"It is time the voters told their servants that the end has come to easy tax revenue and that spending must be curbed or sources other than the property tax found to finance their schemes," Watson replies. "And despite all their screaming, it is a fact that the Watson Initiative provides ample funds in general for all existing programs. Wherever there is an imbalance, five years is provided to find additional revenue from sources other than property."

Table 2. Comparison of Estimated 1973-74 Property Tax Reductions and State Tax Increases, by Type of Taxpayer, Resulting from Watson Initiative

(In Millions)

	Reduced Property Taxes	Increased State Taxes	Difference
Homeowners	—$ 663	+$ 595	—$ 68
Renters	(—708)[1]	+ 378	+ 378
Owners of Nonresidential Property	— 1,626	+ 758	— 868
Tourists	....[2]	+ 30	+ 30
State and Local Governments	....[2]	+ 93	+ 93
Totals	—$2,997	+$1,854	—$1,143
Explanation of differences:			
Reduction in public school expenditures			—$ 771
Unfunded state costs			— 372
			—$1,143

[1]Benefit to landlords.
[2]No direct reduction.
Source: Legislative Analyst

17

DEATH PENALTY. Amends California Constitution to reinstitute state death penalty statutes, subject to amendment or repeal. Provides death penalty not cruel or unusual punishment under California Constitution. Financial impact: None.

On February 18, 1972, the California Supreme Court in a 6-1 decision ruled the death penalty unconstitutional in California. The court's decision, written by Chief Justice Donald R. Wright, declared the death penalty to be both cruel and unusual punishment. Putting criminals to death, wrote Chief Justice Wright, "degrades and dehumanizes all who participate in its process. It is unnecessary to any legitimate goal of the state and is incompatible with the dignity of man and the judicial process." At the time the decision was announced, there were 106 men who had been convicted of murder and who were waiting on death row — some had waited many years — for the issue to be decided. There have been no executions in California since April 12, 1967.

Immediately following announcement of the decision, Governor Ronald Reagan and Attorney General Evelle J. Younger vigorously attacked the court's reasoning. Younger called the decision "the most outrageous opinion ever handed down" by a state supreme court. Reagan said the decision "makes a mockery of the constitutional process involved in establishing the laws of California." Another strong advocate of capital punishment, Senator George Deukmejian, promptly introduced in the Senate a proposed constitutional amendment (SCA 13) reversing the decision by declaring that

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"nothing in this constitution shall be construed as limiting the power of the Legislature to provide for the death penalty as a form of penalty for criminal offenses." The proposed amendment was defeated on the Senate floor on May 2nd, but by that time a drive was well under way to accomplish much the same thing by way of the initiative process.

Initiative measure

On June 30th, the Secretary of State announced officially that the death penalty initiative, along with eight others, had qualified for the November ballot. The exact wording of the proposed amendment (Article I, Section 27) is:

> All statutes of this state in effect on February 17, 1972, requiring, authorizing, imposing, or relating to the death penalty are in full force and effect, subject to legislative amendment or repeal by statute, initiative, or referendum.
>
> The death penalty, provided for under those statutes shall not be deemed to be, or to constitute, the infliction of cruel or unusual punishments within the meaning of Article I, Section 6, nor shall such punishment for such offenses be deemed to contravene any other provisions of this constitution.

Only one day earlier, however, the United States Supreme court agreed with the California court in part, ruling 5-4 that the death penalty is a cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments to the U.S. Constitution when imposed under statutes permitting its descretionary imposition Two of the five members of the majority termed the death penalty unconstitutional in all cases, but the three others apparently reserved judgment as to whether a mandatory death penalty was necessarily unconstitutional — that issue they said, was not before them.

Opponents of the death penalty initiative, led by the American Civil Liberties Union, immediately challenged its placement on the November ballot, arguing that the U.S. Supreme Court decision settled the matter and that a vote would simply be a waste of the taxpayer's money. The initiative seeks, they said, to reinstate all statutes authorizing the death penalty, most of which provide for the permissive penalty clearly outlawed by the federal court. The only crimes that carried a mandatory death penalty prior to February 18th, they pointed out, were treason against the State of California, perjury that results in the conviction and execution of an innocent man, train-wrecking resulting in injury, and deadly assault by a life-term prison inmate on a non-inmate (guard). The State Supreme Court rejected the ACLU challenge on August 31st but noted in doing so that its action was not to be interpreted as a decision on the constitutionality of the initiative.

Deterrent effect

The arguments presented in favor of Proposition 17 reflect the traditional belief that the death penalty is an important deterent to murder. Many of those who urge approval of Proposition 17 agree, however, that following the U.S. Supreme Court decision, the death penalty can only be reestablished for crimes for which it is the mandatory punishment upon conviction. They argue that it is nevertheless important to do so, particularly so as to afford some protection to guards working in prisons that hold life-termers. (Five of the 100 prisoners on death row when capital punishment was outlawed by the state court were there for assault on a prison guard; none were there for any of the other three crimes for which the death penalty was mandatory.) Attorney General Younger has suggested also that if Proposition 17 passes, he may push for the addition of skyjacking as the fifth crime for which the death penalty is mandatory, although he now says he is "no particular fan of capital punishment" and in supporting the initiative is "not fighting for the death penalty, but for the rights of the Legislature."

Senator Deukmejian, who wrote that ballot argument for Proposition 17, contends that the death penalty is an "effective deterrent to some would-be killers" and that "with this deterrent now eliminated, the lives of countless innocent people (especially law enforcement officers, prison guards, and prison inmates) have been placed in grave jeopardy . . . If the death penalty saves the life of one policeman or one prison inmate or one prison guard, or one child or one private citizen, its existence is justified." Among the supporters of the proposition are the Peace Officers Association, District Attorney's Association, and the California Correctional Officers Association.

The authors of the opposing argument, former Governor Edumnd G. Brown, actor Bill Cosby, and Erwin Loretz, President of the California Probation, Parole and Correctional Association, argue that "forty years of studies show that the death penalty does not prevent murders or other violent crimes," and that "dangerous criminals need not be killed to protect society." "The death penalty bloodies us all" they contend, because it is usually applied only to those who are poor or members of a racial minority, because it reinforces the tendancy to use violent retribution to solve social problems, and because it has proven to be of no help in the fight against crime."

19

MARIJUANA. Removes state penalties for personal use, cultivation, transportation, or possession of marijuana by persons 18 years and older. Financial impact: None.

Persons arrested for possession of marijuana in California may be charged with a felony and, if convicted, given a sentence of from one to ten years in a state prison. Arrest and conviction a second time may result in a prison sentence of two to twenty years and a third time, five years to life. In practice, however, the courts have usually used their discretion to reduce the initial felony charge to a misdemeanor with a sen-

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tence of six months to one year in a county jail, or a fine of up to $500, or both. In fact, most first offenders are now given a suspended sentence with probation.

It has also been reported that in many areas law enforcement officers do not usually arrest a person who is found to possess only a very small quantity of marijuana. Nevertheless, in 1971, 46,143 adults and 18,454 juveniles (under 18) were arrested for marijuana offenses by California law enforcement officers. Based on these figures, which undoubtedly only begin to suggest the number of persons who actually used marijuana one or more times in 1971, marijuana offenses have come, in only a few years, to be among the most prevalent crimes in this state.

Marijuana like alcohol

Many persons believe, however, that the mere use of marijuana by an individual, like the use of alcohol, should not be considered a crime at all, as long as it does not result in some other criminal activity. This is the thought behind Proposition 19, which adds this new provision to the state's Health and Safety Code (Section 11530.2, Division 10):

(1) No person in the State of California 18 years of age or older shall be punished criminally, or be denied any right or privilege by reason of such person's planting, cultivating, harvesting, drying, processing, or otherwise preparing, transporting, or possessing marijuana for personal use, or by reason of that use.

(2) This provision shall in no way be construed to repeal existing legislation, or limit the enactment of future legislation, prohibiting persons under the influence of marijuana from engaging in conduct that endangers others.

The object, according to its backers, is to "decriminalize" the private use of marijuana, including the cultivation of the plant for private use. It does not legalize its use, they say, for it does not sanction or encourage the smoking of marijuana. It simply removes existing criminal penalties against its private possession for personal use. They argue that many recent studies, including those by the President's Commission on Marijuana and Drug Abuse, the National Institute of Mental Health, and the American Medical Society all agree that marijuana is is not addictive, does not necessarily lead to the use of other drugs, does not damage the body, and does not produce mental illness, crime, or violence. Approval of Proposition 19, they claim, "will save California taxpayers hundreds of millions of dollars each year currently wasted on the needless arrest, prosecution, and jailing of otherwise innocent and law-abiding citizens . . . Marijuana is not as harmful as our two most popular drugs — alcohol and tobacco — and there is no justification for making criminals out of people who use any of these."

Compounding a problem

Opponents of Proposition 19 argue that the new statute (which can only be changed in the future by another initiative or a referendum), will "legalize" marijuana and thereby give encouragement to its use. They disagree that marijuana is no more dangerous than alcohol and that its use does not lead to the use of narcotics. Unlike alcohol, they say, relatively little is known about the effect of marijuana on the brain and nervous system, and the behavior of users is unpredictable. Senator H. L. Richardson, who wrote the ballot argument opposing Proposition 19, contends that "Even one marijuana trip is dangerous because marijuana is the vehicle for crossing the psychological barrier to drug abuse. Liberalization of the laws on marijuana would be the green light for even more drug abuse, compounding a problem already raging out of hand."

Others who oppose Proposition 19 because they fear it will in some way condone the use of marijuana, nevertheless favor a reduction in the existing penalties that are intended to discourage that use. They acknowledge that the Legislature's attempt in 1961 to restrict the use of marijuana by increasing the penalty from a misdemeanor to a felony has been a failure. Repeated efforts in the Legislature to reduce the penalties, however, have not been successful. AB 185 (Vasconcellos and Sieroty) and AB 221 (Campbell) of 1970, which would have deleted marijuana from the list of drugs defined in statute as narcotics, were both unsuccessful (AB 221 was passed but vetoed by Governor Reagan), as was a similar measure, AB 452 (Campbell), in 1971. This session, two measures were introduced to make the use of marijuana a misdemeanor rather than a felony and to reduce the first offense punishment to a maximum of six months in jail, a $500 fine, or both. The two bills, AB 1778 (Sieroty) and AB 413 (Sieroty), are still alive but appear to have only a slim chance of passage, at best, despite considerable support from such organizations as the State Bar. AB 1778 has passed the Assembly, but was once defeated 20-17 on the Senate floor and is now awaiting reconsideration after the current legislative recess. A third bill, SB 902 (Gregorio), which would reduce the first offense penalty to a fine of $50 to $300, was defeated 19-16 in the Senate but is also awaiting possible reconsideration. In any case, however, Governor Reagan has indicated he will veto any legislation to reduce the penalties for marijuana use.

The California Marijuana Initiative, which is the name of the organization that got this initiative on the ballot, says that its initial purpose was primarily "educational." Members of the organization now believe the measure has a chance of passage, despite an August poll showing approximately two-thirds of California's voters to be opposed, but say they will not be discouraged by a defeat and will try again. The measure is also supported by the American Civil Liberties Union and the San Francisco Bar Association.

Ballot Propositions Explained

All 22 ballot propositions are described and briefly analyzed in a 28-page booklet published by *California Journal* in mid-September. This booklet provides objective information essential to an informed judgment of the merits of each measure.

Copies may be obtained by groups and individuals. The cost is: 1-10 copies, 25¢ each plus 10¢ postage and handling per order (payment must accompany your order); 11-50, 20¢ each (if you send payment, we will cover postage and handling; if you prefer to be billed, we'll add the cost of postage and handling); 51 or more, 15¢ each.

Address orders to California Journal Ballot Propositions, 1617 10th Street, Sacramento, California 95814.

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20

COASTAL ZONE CONSERVATION. Requires preparation of ecology plan. Prohibits development within established permit area without permission. Appropriates $5,000,000 for 4-year period. Financial impact: $1,250,000 cost per year to state, plus local administrative costs.

California's 1,047 mile coastline has long been a source of concern to conservationists. They have watched the continuing transformation of open spaces into industrial sites and second home development with a growing sense of alarm and frustration, fearful that such development will permanently close all but a small part of the coastline to public enjoyment and destroy the scenic and natural resources of which Californians have long been proud. Giving concrete expression to their concern, they have gone to the Legislature three years in a row seeking to establish a state land use planning and control body that will halt detrimental development and draft a plan to permit only such future development as is compatible with preservation and enhancement of the natural resources of the seacoast. These efforts have failed, however, to overcome the combined opposition of local government, labor, land developers, industry, and others who want to maintain the traditional authority of local governments in the field of land use planning and control. Having failed in the Legislature, the conservationists have decided to put the matter directly before the voters in the form of an initiative statute that appears on the ballot as Proposition 20.

Proposition 20 creates the California Coastal Zone Commission and six regional coastal zone commissions to draw up a "comprehensive plan for the orderly, long-range conservation of the California Coastal Zone", an area along the coast extending seaward approximately three miles and inland to the top of the coastal range, except in Los Angeles, Orange, and San Diego counties, where it will extend inland no more than five miles. The plan is to be completed and submitted to the Legislature by December 1975, when the planning commissions are to go out of existence (presumably to be replaced by a permanent body to administer the plan). In addition, while the plan is being prepared, the state and regional commissions are to administer a permit system intended to strictly limit all development within 1,000 yards of the mean high tide line, thus establishing a moratorium on "adverse" development until the land use plan can be put into effect. The measure appropriates $5 million from the Bagley Conservation Fund (1972 income tax withholding windfall) to meet the costs of the state and regional commissions through 1976.

Land use plan

The plan that the state commission is to prepare, with the assistance of the six regional commissions, is to provide for "the maintenance, restoration and enhancement of the quality of the coastal zone environment, and for its orderly, balanced . . . preservation." It is specifically required to deal with: ecological principles governing the extent and suitability of development, transportation, public access, the need to reserve land and water areas for certain uses, recreation needs, public services, optimum population densities, mineral and living resources of the ocean, and methods of implementing the plan. The planning process is to begin in 1973 with preparation of planning guidelines and a statement of objectives by the state commission. Each regional commission, in cooperation with local agencies, is then to carry out a detailed study of its region and to prepare recommendations for each element of the plan. Following public hearings in each county, these recommendations, are to be forwarded to the state commission in time to meet a deadline of April 1, 1975. The state commission, after additional consultation with local, state, and federal agencies and interested private organizations and individuals, is to convert these recommendations into a single coastal plan to be submitted to the Legislature by December 1, 1975.

The 12-member state commission is to consist of six "public" members and one representative selected by each of the six regional commissions. The regional commissions are to vary in membership from 12 to 14, with half their members representatives of local government (supervisors, city councils, and regional associations) and half representing the general public. The local government representatives are to be selected by their own local bodies. The public members of the state and regional boards, of which there are to be 45, are to be appointed in equal number by the Governor, the Senate Rules Committee, and the Speaker of the Assembly. Each public member is to be "a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information, to appraise resource uses . . . , to be responsive to the scientific, social, esthetic recreational, and cultural needs of the state." All members are to serve without pay.

Permit system

Perhaps the most controversial feature of this measure is the permit system that is to be used to control development within the coastal zone while the plan is being drawn up. Beginning February 1, 1973, anyone who wants to undertake any development (with minor exceptions) within the permit area (from 1,000 feet above mean high tide to about three miles out to sea) will be required to obtain a permit from the regional commission as well as from any other local agency that may also require development permits. Ordinarily, approval of a permit will require a majority vote of the regional commission (or, on appeal, the state commission). However, permits for dredging and for projects that impinge upon public recreational areas or public access, or block the view from the nearest highway, or adversely affect water quality, will require approval by a two-thirds vote. Moreover, no permit is to be issued unless the regional commission has found that the development "will not have any substantial adverse environmental or ecological effect" and that it is consistent with the general objectives of coastline conservation. Permit applicants and any person "aggrieved

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by approval of a permit" may appeal first to the state commission (which may grant a *de novo* public hearing) and then to the state courts. Violators are subject to substantial fines.

Opponents of Proposition 20, who include the State Chamber of Commerce, the California Real Estate Association, the Teamsters, the Council of Carpenters and the Council of Operating Engineers, Buildings and Construction Trades, charge that this permit requirement would, in effect, "establish a two to four year moratorium on virtually all building in the coastal area, including development for recreational purposes." The result, they say, will be a severe economic depression in each of the 15 coastal counties, with a great loss of jobs, land values, and local tax revenues — all, they charge, for a "power grab" and "land grab" by "elitists" who want to take over the coastline for their own purposes.

The opponents also charge that placing permit power in the hands of the regional commissions introduces a philosophy of supergovernment that dilutes the proper authority of locally elected officials to serve their communities. The effect, they say, will be to stifle citizen participation in local affairs, not simply for the "interim period" but, once the comprehensive master plan is adopted, for all time. Proposition 20 represents, in their view, an attempt to by-pass local democracy and to substitute a "vast new bureaucracy and appointive commissioners largely representative of a single purpose point of view."

To this, the supporters of the proposition respond that not only are they taking the issue to the public through the directly democratic initiative process, but they have also been careful to give the representatives of local government 50 percent memberships on the regional and the state commissions. Moreover, they say, "no important decisions will be made until the commissions hold public hearings and the citizen is heard." The objective, they contend, is not to close the coastal zone but to open it whenever possible and to protect it from "the oil industry, real estate spectulators and developers, and the utilities — [who] are primarily concerned with profits, not the public interest." Protection of the coastline cannot be left solely to local government, they believe, because the problems transcend local boundaries in most cases and are therefore beyond the power of local agencies to solve.

"Examining the fate of (Proposition) Nine provides a valuable political lesson for conservationists, as well as for unaffiliated Californians alarmed and frustrated by a deteriorating quality of life: If the people of California are to take the law into their own hands through the initiative process, they must do so only under narrowly-construed circumstances.

"Any measure submitted to the people should treat a single issue, such as coastal management. The proposal should go on the ballot only when the Legislature has egregiously failed to enact it, despite incontestable public demand. Finally, it should be a matter clearly understood and beyond range of the fright tactics used to gun down the Peoples' Lobby."

. . . John Zierold, Sierra Club lobbyist in Sacramento writing in the *Los Angeles Times.*

Proposition 20 — Supporters and Opponents

The following is a partial listing of the many organizations that have taken a position for or against the coastline initiative.

Supporters:

California Coastal Alliance
(An alliance of several dozen environmental organizations)
American Association of University Women
League of Women Voters
Planning and Conservation League
Associated Students, University of California
Federation of Western Outdoor Clubs
Congress of California PTA
U.S. Senators John Tunney and Alan Cranston
Assembly Speaker Bob Moretti
Senate President pro Tem James Mills
Sierra Club
National Council of Senior Citizens

Opponents:

Teamsters
California Real Estate Association
Building and Construction Trades Council of California
Fishermen's and Allied Worker's Union, I.L.W.U.
Council of Carpenters
California Manufacturers Association
California Chamber of Commerce

Relatively little of California's coastline — only 252 of 1072 miles — is available for public use, according to a recent state report. Proposition 20, say its backers, will save what is left from corporate landowners and others interested in rapid development. The permit system to be put into effect while the planning process is going on will not, they say, impose a moratorium on all building in the protected zone but will ensure that development is undertaken in a careful, rational way that will not have an adverse environmental effect, nor destroy irreplaceable coastal resources.

Proposition 20's opponents charge that all this is simply a scare tactic, that the coastal zone is not threatened by destructive development. As evidence, they refer to a recent state inventory of the total coastal zone (not simply the coastline) which states that 74 percent of the area is in open space, 65 percent is undeveloped in any way, and 54 percent is protected by public ownership.

The Legislative Analyst has stated that in addition to the $5 million appropriated to support the commission through 1976, there will be additional costs associated with the possible loss of oil and gas extraction revenues, inverse condemnation suits resulting from the stringent application of the permit process, and land acquisition. Local agencies would also have "some additional costs," according to the Analyst, for processing permits and assisting the regional commissions in the planning process, and would suffer some loss in property tax revenue from deferral of developments along the shoreline.

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21

ASSIGNMENT OF STUDENTS TO SCHOOLS. Prohibits assignment to particular school because of race, creed, or color. Repeals policy preventing racial and ethnic inbalance in schools. Financial impact: None.

Proposition 21 is an initiative to amend provisions of the state's Education Code regarding school desegregation. It has five sections, of which the first adds this statement to the code:

> "No public school student shall because of his race, creed, or color be assigend to or be required to attend a particular school"

Three of the remaining four sections delete from the code or nullify those provisions that state it to be the policy of the state to prevent and eliminate racial imbalance in the schools and provide guidelines for districts to aid them in carrying out that policy. The final section provides a "severability clause", which simply means that if the courts should find one part of this initiative to be unconstitutional, that decision will not necessarily invalidate all the other provisions.

The purpose of this initiative, according to its chief legislative sponsor, Assemblyman Floyd L. Wakefield, is to repeal a law passed in 1971 which, he says, "mandates forced integration, which could only be accomplished through forced busing." Passage of the initiative, Wakefield says, will preserve every parent's right to have his or her children attend schools in the neighborhood in which they choose to live.

The sections of the Education Code which Proposition 21 seeks to repeal were added to the code by legislation authored in 1971 by Assemblyman William Bagley, and now known as the Bagley Act. That act, which became effective in March of this year, states that it is the declared policy of the Legislature "that persons or agencies responsible for the establishment of school attendance centers or the assignment of pupils thereto shall prevent and eliminate racial and ethnic imbalance in pupil enrollment. The prevention and elimination of such imbalance shall be given high priority in all decisions relating to school sites, school attendance areas, and school attendance practices." This statement, while new to the Education Code, did not, of course, actually establish a new state school policy, for that policy had been set earlier following the U.S. Supreme Court's 1954 school desegregation decision (*Brown vs. Board of Education*) and the subsequent federal and state court decisions interpreting and expanding upon that original decision. The provisions of the Bagley Act are intended, in fact, to provide guidelines for school districts and the State Board of Education in complying with school desegregation policy, so that the manner of compliance is not left to the courts.

Thus, the Bagley Act directs the school districts of the state to report periodically to the state board on the racial and ethnic composition of their schools and the population they serve and to "study and consider" plans which could correct any imbalance — that is, any significant difference between the percentage of pupils of one racial or ethnic group in each school and the districtwide percentage. To correct such an imbalance, it is suggested that the districts consider "traditional factors used in site selection, boundary determination, and school organization by grade level." Although it is obvious that the definition of school service areas and the operation of pupil transportation systems are closely related to the matter of segregation and racial or ethnic imbalance, the law nowhere refers directly to busing as a device for correcting an imbalance. According to Assemblyman Bagley, the primary objective of his legislation was to establish flexible guidelines to encourage school districts to plan ahead with regard to the racial and ethnic distribution of pupils so as to avoid bussing controversies.

Proposition 21, say its opponents, which include the League of Women Voters, the California School Boards Association, the American Civil Liberties Union and Superintendent of Public Instruction Wilson Riles, is unconstitutional in that part (quoted above) which prohibits school assignment on the basis of race, creed or color. That, they say, is the reason for the separation clause, which will leave in effect those sections repealing the Bagley Act if the proposition is passed and the courts then rule the first section to be unconstitutional. A bill by Assemblyman Wakefield, AB 16, which was identical to Proposition 21 except for the separation clause, was defeated in the Legislature earlier this year, after the Legislative Counsel and other legal authorities stated that in their opinion it was unconstitutional.

The opponents also argue that passage of Proposition 21 will, if anything, "encourage Court-ordered busing in California." It will have this effect, they say, because it will repeal statutory provisions which provide a way for districts to solve their own problems of racial balance before they are taken to court and forced to adopt desegregation plans designed by the court. In support of this argument, they quote a letter from Governor Reagan to the State Board of Education in which he says of the Bagley Act, "What this law does is to create an administrative mechanism to handle the problem rather than leave the issue for judicial action." They also quote an opinion prepared by the Legislative Counsel which states that the Bagley act does not give the Department of Education authority to draw up a desegregation plan for a district and therefore does not "usurp local control" as Assemblyman Wakefield contends.

Supporters of Proposition 21 include a number of Republican Legislators, the Orange County Superintendent of Schools, and more than 25 small school districts.

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Selected State Government Reports

CAMPAIGNS AND ELECTIONS

Statement of Cost Effect of Propositions on Ballot for November 7, 1972, General Election; by the Legislative Analyst, State Capitol, Sacramento 95814. August 24, 1972. 23 p.

An Analysis of of Proposition 14, The Watson Property Tax Initiative, on the November 1972 Ballot; by the Legislative Analyst, State Capitol, Sacramento 95814. August, 1972. 44 p.

Propositions Appearing on the November 7, 1972, California General Election Ballot; prepared by the Assemb y Democratic Consultants, Rm. 436 State Capitol, Sacramento 95814. August 31, 1972. 58 p. Includes analyses and major arguments for and against each proposition.

Analyses and Recommendations on Ballot Measures Nov. 7, 1972, General Election; by the California Chamber of Commerce, 455 Capitol Mall, Suite 300, Sacramento 95814. (25¢) September 1972. 45 p. Includes the Chamber's recommendations on the 19 measures on which it has taken a position.

We the People, A Candidate Guide Book to the 1972 State and Federal Elections; by the California Chamber of Commerce, 455 Capitol Mall, Sacramento 95814. (Single copies $1.00) 1972. 47 p. Published in two editions: northern and southern California. Includes party and candidate platforms, campaign statements and photographs of California candidates, ballot propositions, and an "election night guide".

Assembly Revenue and Taxation Committee Report on the Watson Initiative, based on an interim hearing held in August 1972. Rm. 4016 State Capitol, Sacramento 95814. Temporarily out of print, the report will be reprinted.

LAW AND THE COURTS

Volume 10 — Reports, Recommendations, and Studies; by the California Law Revision Commission. Available from the Documents Section of the Department of General Services, P.O. Box 20191, Sacramento 95820 ($12.00 plus 5% sales tax for California residents). May 1972. 1,227 p. Contains material published during 1970 and 1971, including recommendations to the 1971 and 1972 Legislatures and background materials on which the recommendations were based. Includes a 423-page study, **California Inverse Condemnation Law,** by Professor Arva Van Alstyne, which is also published separately and can be purchased from the California Continuing Education of the Bar, Department CEB-C, 2150 Shattuck Ave., Berkeley 94704. ($7.50, including sales tax).

Search and Seizure, A Statement of the Current Principles and Their Application, by Evelle J. Younger, Attorney General. Available from the Office of Procurement, Documents Section, P.O. Box 20191, Sacramento 95820. August 1971. 231 p. Revised and updated.

MISCELLANEOUS

Cooperation in Local Government: The Oakhurst Perspective; a report on the Policy-Makers Conference, Oakhurst, March 23-26, 1972, sponsored by the Valley Regional Training Center, Fresno. April 14, 1972. 20 p.

Report to the Director, Department of Consumer Affairs; by the Consumer Advisory Council, published by the Agriculture and Services Agency, 1220 N Street, Sacramento 95814. August 2, 1972. 33 p. A report on the activities of the council for the year ending July 15, 1972 and a statement of recommended programs, projects, and objectives.

Collective Bargaining in American Government; a report of the Western Assembly on Collective Bargaining in American Government, sponsored by the Institute of Industrial Relations, UCLA, and the American Assembly, Columbia University, May 11-14. 13 p. Discusses approaches to assist in solving problems in the field of collective bargaining in government — applicable to state government in California. Available from the Institute of Industrial Relations, University of California, Los Angeles, 90024.

The Emergency Employment Act of 1971: Experience in the State of California (excepting Los Angeles & San Diego), Second Interim Report, May 1972, by Martin P. Oettinger and C. Daniel Vencill, Department of Economics, University of California, Davis 95616. 25 p. One of eighteen case studies being conducted with the National Manpower Policy Task Force under a Ford Foundation grant.

Physician's Assistant; a meeting of the Assembly Select Committee on Health Manpower, State Capitol, Sacramento 95814. January 25, 1972. ($3.00) 122 p. Testimony regarding the current status of physician's assistant programs in California.

Primer on Environmental Law in California, Compiled for General Use as Source Material; by the Attorney General's Environmental Unit, Department of Justice, Fifth and Capitol Mall, Rm. 500, Sacramento 95814. August 1972. 38 p. Outline form for reference use only.

1971 White House Conference on Aging, Housing; prepared by the U.S. Department of Housing and Urban Development, Washington, D.C. 20410, for the White House Conference on Aging, November 28-December 2, 1971. 122 p. Includes statistics on elderly population, housing and income, and federal housing programs.

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California Journal/*NEWSBRIEFS*

School enrollment dips, but segregation rises

California's public schools opened their doors last month to 38,000 fewer pupils than a year ago but with more of them attending racially segregated schools. According to a report issued by the State Department of Education, there were 1,214 schools in the last schoolyear with minority-group pupils comprising at least half their enrollment, an increase of 110 schools and 92,000 blacks and Mexican-Americans over the preceding year. "More than one-third of all black pupils in the state (145,000) attended schools that were 90 per cent or more black," the report states, "and more than half of them attended schools that were 50 percent or more black." One-third of the Spanish-surnamed pupils attended schools in which 50 percent or more of the pupils were Spanish-surnamed. The report attributes the increase in segregated schools to a lack of effort on the part of districts to overcome *de facto* segregation in housing, together with growth in enrollment of minority students and a decline in white student enrollment.

Despite the net decline in the state's school enrollment, some classrooms continue to be overcrowded. The imbalance is such, explained Wilson C. Riles, State Superintendent of Public Instruction, that busing offers no adequate solution, and school districts lack funds to hire more teachers to reduce excessive pupil-teacher ratios. "If we could have children where the empty classrooms are we could save money," Riles said, "but that's the problem we have."

'Day One' is history, and BART sets out to win a $1.4 billion bet

It was four years later than planned and several months later than promised only a year ago, but on September 11th a crowd in an Oakland station peered intently down the tracks of the Bay Area Rapid Transit district, and someone finally shouted, "It's coming! It's REALLY coming!" At noon, the first BART trains pulled into Oakland and Fremont stations almost simultaneously at opposite ends of the 28-mile segment in Alameda County. Fifteen minutes later, all available trains were running, carrying 2,000 to 2,500 passengers an hour against a seating capacity of 1,800.

By all accounts, it was a gala event, with many of the visitors wearing buttons proclaiming, "Day One I was there!". "We're a little late and it cost a little bit more than we expected," conceded BART President George Silliman, "but I hope BART will get you people to end your love affair with the automobile." BART's success in ending that affair will have a crucial bearing on what San Francisco Mayor Joseph Alioto called "this $1.4 billion bet we've made."

Present plans call for extending BART service 12 miles to Richmond in November, 17 miles to Concord early next year, and 18 miles under the bay, from Oakland to San Francisco, sometime next summer — 75 miles in all. These plans depend, in part, on BART's success in solving electronic problems in its automatic control system, and also on the ability of Rohr Corporation to maintain its schedule for delivering additional 72-passenger cars. If all goes well, the 75 miles of track will be in service a year from now, constituting the United State's first new rapid transit system in half a century.

Meanwhile, BART continues to operate, from 6 a.m. to 8 p.m. Mondays through Fridays, with only preliminary clearance from the California Public Utilities Commission, which also ordered the trains to be manned until the PUC is convinced of the reliability of BART's computerized traffic-control system. Unlikely to speed approval was BART's first accident, on October 2nd, when one car jumped its track at Fremont, injuring four passengers and a train attendant.

While northern California thus shakily saw some fruits from its labors in the field of mass transit, southern Californians observed the eight-year-old Southern California Rapid Transit District undertake a new $600,000 feasibility study. In announcing the study, SCRTD directors said it would lay a foundation for development of a four-county rapid transit network, a development a *Los Angeles Times* headline questioned as "action or another costly study?". Senator Lawrence E. Walsh of Huntington Park, a member of the Senate Transportation Committee and a critic of SCRTD, guessed the latter, and the committee's prodding resulted in the launching of a special audit of the district by a team of governmental specialists under state Auditor General William H. Merrifield, with the findings due by next January 15th. Reviewing SCRTD's accomplishments since 1964, Senator Walsh concluded that "a system of smoke-belching buses is not a rapid transit system."

Sierra Club wins round against power plant

The Pacific Gas & Electric Company's plan to build a nuclear power reactor near Arena Cove, 130 miles north of San Francisco on the Mendocino Coast, generated more legal static last month. San Francisco Superior Court Judge Ira A. Brown Jr. ruled that an agreement made in 1968 between PG&E and the State Resources Board, in which the board promised not to oppose construction of the proposed power plant, is "unenforceable."

The Superior Court finding was in favor of the Sierra Club, which had filed suit February 9th to dissolve the PG&E agreement with the state board. The club charged that no public hearings had been held and that the board, by permitting the utility to conduct its own environmental impact study, had illegally delegated state regulatory powers to a regulated company.

A week earlier, by coincidence, the Sierra Club Bulletin published the results of a survey of its 140,000 members. Among other things, the survey found support for the club's opposition to the proposed Disney development of Mineral King, the supersonic transport, and the Alaska oil pipeline. Least popular, the Bulletin reported, was the club's policy on power generation,

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with 65 percent of the respondents declaring it to be unwise — and half of them specifically mentioning the club's apparent opposition to nuclear power.

The PG&E proposal is scheduled for hearings early next year before the U.S. Atomic Energy Commission and the California Public Utilities Commission. It ran into interference last month when the U.S. Attorney General's Office charged the private company with monopolistic practices regarding power generation and distribution to the Northern California Power Agency, which comprises 11 smaller cities in the power business. The Attorney General recommended to the AEC that its approval of PG&E's Mendocino permit be contingent, in part, on the company's making power available to the NCPA.

Phone company seeks $328 million rate hike

Pacific Telephone asked the California Public Utilities Commission to grant a two-stage $328 million increase in phone rates, which would raise home rates to $6.50 a month from the present $4.80. In the $103 million first stage, the company seeks an "interim" increase, which can be granted with a minimum of formal hearings. The subsequent $225 million second stage will require full public hearings. The company said the interim increase will give Pacific the 7.85 percent rate of return authorized by PUC and the state Supreme Court, as compared with its present 6.1 percent return. The full increase will raise profits to 9.5 percent, the company said.

Pacific was granted a $55.4 million net rate increase August 8th, after the Supreme Court ruled that a $143 million annual rate increase granted a year ago by the PUC was excessive. (See *California Journal*, September 1972, p. 270.)

State affirmative action plan wins conditional federal approval

A "California Plan" to increase minority-group representation in the state's building and construction industry won conditional approval last month from the U.S. Department of Labor's Office of Federal Contract Compliance. Full approval, which is expected by January 5th, awaits the signed agreement of more labor-management groups. When it comes, California's will be the first such statewide plan.

The California Plan grew out of a belief that local plans, such as those imposed in Philadelphia, Chicago, and St. Louis, generated more conflict than jobs, according to Pier Gherini, chairman of the California Fair Employment Practices Commission. Federal officials approached him in April 1971, Gherini said, to seek California's leadership in pushing affirmative action programs throughout the state. These are now required on all federal construction jobs exceeding $500,000. Under the California Plan, however, coverage is not limited merely to federally financed building and construction, but encompasses all building and construction in the state, including demolition and land-clearing.

A nine-member Affirmative Action Committee headed by Gherini will administer the program. The goal is to bring minority-group representation in the building trades up to each group's percentage of the state's total population, as reflected in the 1970 census, over a period of five years. This is to be done, however, without discriminating against "any qualified applicant or employees." Under the plan, the state Department of Education has responsibility for providing any education or training programs that may be required.

Gherini acknowledged that the statewide plan has met with some skepticism among some minority representatives who consider "hometown plans" to be more effective. But Gherini points out that the California Plan allows for such local plans, and where they exist or are established they supersede the state plan.

Billboards begin to fall along highways in state

"I think that I shall never see a billboard so lovely as a tree. Indeed, unless the billboard falls, I shall never see a tree at all." Assemblyman Edwin Z'berg of Sacramento thus paraphrased Joyce Kilmer's well-worn poem as he stood along California 99 between Lodi and Sacramento one day last month, blow-torch in hand and eyeing a billboard advertising Reno's Harold's Club. Before Z'berg and Emerson W. Rhyner, deputy chief of the state Public Works Department's legal division, set about their cutting, the Assemblyman paused for a final observation. "I hope," he quipped, "that it won't be recycled into another billboard."

The symbolic cutting will be followed by removal of 49,000 billboards lining interstate and scenic highways throughout the state under a six-year, $17 million federal-state program. Most of the funds will reimburse sign owners for their losses. Z'berg authored legislation putting up $4.25 million as the state's share in the program.

Meanwhile, under a sign-control ordinance adopted five years ago by the City of South Lake Tahoe, 20 more billboards along Highway 50 were removed last month. The city ordinance requires the phased removal of off-premise signs larger than 100 square feet. Sign removal is expected to gain momentum with adoption of a Tahoe basin sign ordinance by the bistate Tahoe Regional Planning Agency.

Greyhound rates rise 11.8% in California

The California Public Utilities Commission granted Greyhound Lines, Inc., an 11.8 percent increase in passenger fares and express rates within the state effective October 7th. In filing for an increase in April 1971, Greyhound claimed that it needed a 15 percent raise to realize a "reasonable" rate of return. In announcing the trimmed increase, the commission said the $5,184,000 that it is expected to generate will not constitute "excessive earnings". The company, it noted, "is in immediate need of additional revenues." The new rates set a minimum fare of 50 cents.

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Recent Supreme Court Decisions

The following are brief summaries of the more significant decisions announced by the California Supreme Court in August and September.

Environmental impact

An environmental impact report must be prepared for every private, as well as public construction project that may have a significant effect on the environment, the Supreme Court announced on September 21st, in what is certain to be one of its most far-reaching decisions this year. The opinion, the court's first interpretation of the state's Environmental Quality Act of 1970, was written by Justice Mosk and concurred in by all but one of his colleagues. Justice Sullivan was the lone dissenter.

The decision dealt with the meaning of Section 21151 of the act, which says, "All . . . local governmental agencies shall make an environmental impact report on any project they intend to carry out which may have a significant effect on the environment . . ." The case arose when a group called the Friends of Mammoth challenged a decision by the Mono County Board of Supervisors giving International Recreation, Ltd., permission to build condominiums, shops, and recreational facilities on a 5.5 acre tract at Mammoth Lakes. The citizens group contended that the board had failed to submit an environmental impact report before issuing the building permit, despite the fact that the proposed project would have a substantial impact on the mountain environment. The board (and the lower courts) contended that no report was needed because the state act pertained only to public construction projects.

Attorney General Evelle J. Younger joined the case on the side of Friends of Mammoth, arguing in an *amicus curiae* brief that the Legislature had clearly intended to cover private as well as public projects. The term "project", said the Attorney General, includes activities "(a) Directly undertaken by state or local governmental agencies; (b) Supported in whole or in part through state or local government agency contracts, grants, subsidies, loans or other forms of funding assistance; (c) Involving a state or local governmental agency lease, permit, license, certificate or other entitlement for use."

The court agreed with the plaintiffs, holding that an impact report is mandatory before a governmental entity can act either for itself or in approving private projects. "These reports," said the court, "compel state and local agencies to consider the possible adverse consequences to the environment of the proposed activity and to record such impact in writing. In an era of commercial and industrial expansion in which the environment has been repeatedly violated by those who are oblivious to the ecological well-being of society, the significance of this legislative act cannot be overstated." A review of the legislative statement of intent in conjunction with other sections of the act, together with evidence that the state law was modeled after the federal Environmental Protection Act, proved to the court's satisfaction that the Legislature intended to include private as well as public projects.

Justice Sullivan, in his dissent, argued that the act had been amended in its passage through the Legislature to exclude private construction and that the "plain meaning" of the words "any project it desires to carry out" in Section 21151 of the act can only refer to projects to be carried out by public entities. Believing otherwise, the majority decision ordered by the Mono County Board of Supervisors to set aside the building permits it had issued to the developers.

A week earlier, on September 12th, the First District Court of Appeal ruled that the state courts may not only require preparation of environmental impact reports but may decide whether such reports are "adequate" within the requirements of the 1970 state law. In this case, the appellate court has halted construction of a project by the Coastside Water District in San Mateo County until it decides that the district's report meets the standards of state law.

Condemnation delays

A public agency may be responsible to a private landowner for damages to his property resulting from an unreasonable delay or other unreasonable conduct that occurs after it announces its intent to condemn his property and before it actually begins condemnation proceedings, according to a Supreme Court ruling on September 22nd. The decision, which was unanimous, was written by Justice Mosk and dealt with two consolidated suits.

The cases were brought by two property owners who charged that the City of Whittier had caused them to lose tenants and suffer other damages when it halted condemnation action for a parking area in 1966 but announced its intention to resume condemnation proceedings in the future. The trial court ruled that the two property owners lacked legal basis for a suit, but the Supreme Court disagreed, saying that where there is an unreasonable period of delay between announcement and actual condemnation action, and it results in damages to the landowner, he is entitled to recover those damages from the public agency. One of the two property owners did, in fact, recover such damages.

Uninsured motorist

When an uninsured motorist is involved in an automobile accident which results in bodily injury or property damage of more than $200, the Department of Motor Vehicles is directed by law to determine if there is a reasonable possibility that the uninsured driver was at fault, and, if so, to require him to post security or to suspend his license. The evident purpose of this law is to encourage all drivers to carry insurance. In

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carrying out this directive, the department has made its determination of possible fault on the basis of the written reports of the persons involved in the accident.

On August 15th, however, the state Supreme Court announced, in its ruling in a case involving Federico Rios, that an uninsured driver is entitled to a personal hearing on the question of fault before his license can be suspended. The unanimous decision followed a recent U.S. Supreme Court decision (*Goldberg v. Kelly*) that failure to provide hearings in such cases violates the due process clause of the federal constitution. Rios, a minor, was denied a hearing despite his insistance that he was not responsible for the accident in which he was involved. Stating that Rios should have been granted the hearing he requested, the court, in a decision written by Justice Stanley Mosk, noted that "the rural and urban poor who cannot afford to purchase insurance or to post security, are frequently faced with license suspension under the financial responsibility law, and . . . a person deprived of the right to drive may forfeit his employment and suffer other disabilities."

Contract award

In a 4-3 decision announced on September 6th, the Supreme Court ruled that the City of Inglewood-Los Angeles County Civic Center Authority had failed to comply with state law in awarding a contract for management functions related to the authority's $12 million civic center construction project. State law requires that public construction contracts be awarded to the "lowest responsible bidder." In this case, the authority awarded the contract to the second lowest bidder after deciding that the winning firm possessed "superior capabilities" and was therefore qualified as the lowest responsible bidder.

The court, in an opinion written by Justice Stanley Mosk, ruled that the authority had failed to find that the lowest bidder was not "responsible". To do so, said the court's majority, the authority, before going to a higher bidder, should have notified the low bidder of any evidence it had indicating that the firm was not "responsible" and then should have given the firm an opportunity to rebut that evidence and to prove that it was in fact fully qualified to perform the contract.

Justices Peters, Tobriner, and Sullivan concurred in the majority opinion. Chief Justice Wright and Justices McComb and Burke dissented, Burke in a separate opinion in which he said public agencies should be given broader discretion in awarding management contracts as compared with actual construction contracts.

The majority decision had little affect on the project in question, inasmuch as the authority itself had taken over the construction management functions, but it is likely to be of interest to many other public agencies.

Package search

In another 4-3 decision, announced on September 13th and also written by Justice Mosk, the court ruled that a package left for shipment with a common carrier may be searched without a warrant if there is "probable cause" to believe it contains contraband. The ruling reversed two 1969 decisions of the court on the same issue, apparently because of a 1970 U.S. Supreme Court decision in which it was held that the police may search an automobile without a warrant at a police station under similar circumstances, since the owner may otherwise remove it from their jurisdiction while they are waiting to obtain a warrant.

In the case before the court, an airline employee, suspecting two men of trying to ship marijuana by air freight, opened one of their packages, found marijuana and called the police. The two men were subsequently arrested and tried for possessing and attempting to ship the marijuana, but the lower courts held that the search was illegal on the basis of the two 1969 state Supreme Court decisions. The Supreme Court reversed the lower court rulings, however, stating that the federal court's decision was applicable and that, in any case, the airport employee acted as a private person rather than a public official and did not need to show probable cause. A common carrier is not bound to accept freight that it is illegal to possess, the state court said, and it has the right to open any packages it suspects may contain contraband.

Chief Justice Wright and Justices McComb and Burke concurred in the majority opinion. Justice Peters wrote a lengthy dissent in which he said the warrantless search did not fit the federal court's ruling and was a violation of the Fourth Amendment. The majority decision, he said, could ony be seen as "the beginning of a long journey toward a society devoid of private sanctuaries."

AFDC benefits

A major element in the state's 1971 Welfare Reform Act was finally validated by a unanimous decision announced on September 14th, nearly 12 months after the provision was originally to go into effect. The provision in question was Section 28 of the new law, which replaced the former needs schedule for AFDC welfare grants and the maximum state participation schedule with a single maximum grant schedule. The effect of the provision was to reduce grants to some 150,000 recipients who have other income and to increase grants to recipients with no other sources of support, a key objective of the Reagan administration (see *California Journal,* July-August 1971, p. 193 and October 1971, p. 270).

Last December the state Supreme Court ruled the new provision invalid because it discriminated unfairly

(Continued on next page)

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against certain recipients contrary to the federal Social Security Act. In April of this year, however, the U.S. Supreme Court accepted a Texas case involving a similar issue and stayed the California decision. When the federal court recently upheld differential payments, the matter went back to the state court, which determined that the federal decision in the Texas case was applicable to the California law, as well, and reversed its earlier ruling.

State Welfare Director Robert D. Carleson hailed the decision as the twelfth of thirteen major court challenges to Governor Reagan's welfare reform program to be resolved in favor of the state and the Department of Social Welfare.

Prisoners' correspondence

Correspondence between a prisoner and his or her attorney may not be opened and read by prison authorities, according to a unanimous decision written by Justice Peters and announced on September 15th. The ruling invalidated a recent change in the Department of Corrections rules that permitted prison guards to inspect attorney-client mail for contraband, including writings that contain "inflammatory" views, encourage violent conduct, describe escape plans, or subvert prison order or discipline. The department's rule, said the court, deprived prisoners of guaranteed prison rights established by the Legislature in 1968 and violated the right to confidential communications between an attorney and his client.

A prisoner's correspondence may be inspected for physical contraband, the court said, but such an inspection does not require the opening and reading of sealed mail. "A prisoner has a right to consult with his attorney in absolute privacy," said the court, "notwithstanding the legitimate interests of prison authorities in the administration of jails."

Incorporation

A state law that permitted property owners who represent 51 percent or more of the total assessed value of land within a proposed incorporated area to block its incorporation was declared unconstitutional by a unanimous court on September 19th. The decision, written by Justice Mathew O. Tobriner, stated that the law violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution and the similar provision of the California Constitution.

The ruling came in a case in which 63 percent of the residents of the Palos Verdes Peninsula in Los Angeles County had signed a petition for incorporation of the area as a city. At the first incorporation hearing, opponents of incorporation, representing over 55 percent of the assessed value of the area, filed written protests, thereby halting all incorporation proceedings for at least one year under the provisions of Section 34311 of the Government Code. Several residents of the area then brought suit, asking the Supreme Court to declare the veto provision unconstitutional, which it did. In his decision, Tobriner observed that under a strict application of the law, "the right of the residents of a region to self-government, to establish and to enjoy the amenities of civic life, would be subordinated to a few persons whose economic interests lie in maintaining low property taxes and lax land use regulations." There is no justification for special voting rights (minority veto power) in the absence of a compelling state interest, the court said, and no such interest was shown.

Other court actions

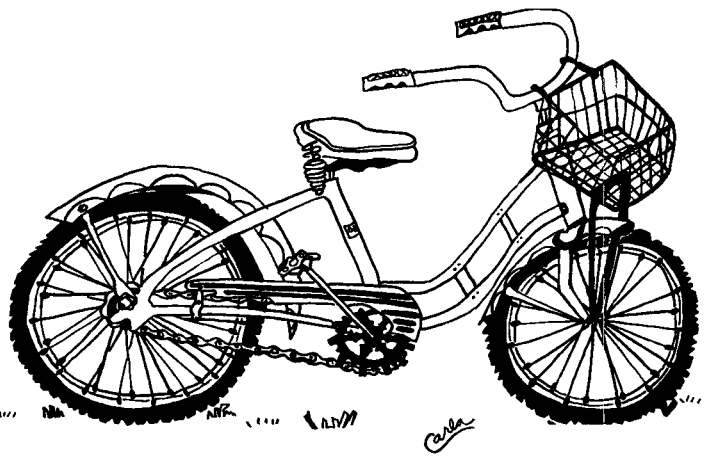
Conviction upheld. A unanimous court on August 2nd affirmed the first degree murder convictions of David Perry and Harry Redmon for the murder in 1967 of Ronald Lee Roy. The court ruled that evidence that Perry had fled the scene of the crime and that Redmon had planned a jail break to avoid prosecution constituted sufficient independent evidence corroborating the incriminating testimony of an accomplice.

Conviction reversed. On September 5th, a unanimous court reversed the first degree murder conviction of Warren O. Saling, charged with conspiracy to commit murder with Sean J. Murphy and with the first degree murder of Murphy's wife in 1969. At Saling's trial, jurors were allowed to hear tape recordings of conversations between Murphy and another coconspirator, implicating Saling, that occurred three and one-half weeks after the homicide. Saling's attorney contended on appeal that the recordings were inadmissable hearsay under California rules of evidence and should not have been heard by the jury. The court agreed, because the recordings were made after the conspiracy had ended, and ordered a new trial on the ground that the original jury may have been influenced by the improperly admitted evidence.

Ex-felons' rights. In early September, the court announced that it will hear a case to determine what crimes may justify denying an ex-felon the right to vote, under a provision of the state constitution that prohibits a person "convicted of an infamous crime" from voting. According to the petition filed by three ex-felons, the League of Women Voters, three prisoners' rights organizations, and the Secretary of State, there is no consistent definition of an "infamous crime" from one county to the next.

Billboards. The court has also agreed to hear a case in which the city of Escondido brought suit in San Diego Superior Court to remove a billboard adjoining a freeway, but was blocked from doing so when the advertising company argued that the city ordinance was invalid because it was not properly enacted. Signboard ordinances passed by many general law cities may be affected by the court's ruling in the case, according to the court's public information attorney.

Proposition 22. In mid-September the court refused to accept a petition for hearing filed by the United Farm Workers Organizing Committee, which sought changes in the ballot title, label, and official explanation of Proposition 22 on the November ballot.



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PEOPLE IN THE NEWS

On September 27th Governor Reagan announced the apointment of **Gleeson L. "Tige" Payne,** 54, a Southern California insurance executive, as state commissioner of insurance, effective November 1st. Payne succeeds **Richards D. Barger,** 44, commissioner for the last four years, who resigned on September 26th to return to private law practice.

Reagan also announced the appointment of **Richard Wilkins,** 55, as Chief of the Division of Industrial Relations. He succeeds Jack F. Hatton, who resigned last January when the department came under heavy fire for alleged failure to enforce safety regulations at the Sylmar Tunnel, the scene of a major disaster last year. Wilkins, a Republican, is manager for Industrial Relations and Security for the Autonetics Division of North American Rockwell.

The Governor also appointed **Ray B. Hunter,** 45, as director of the Department of Conservation. Hunter, a deputy director of the Department of Parks and Recreation since 1967, and chief deputy since 1969, succeeds James G Stearns, who is now Secretary of the Agriculture and Services Agency.

Republican **Assemblyman Bill Brophy,** 36, announced last month that he would discontinue his campaign for Congress because of charges brought against his wife as a result of a traffic accident last June in which two persons were killed. "I feel that I cannot campaign for Congress during this very disappointing and tragic ordeal," he said. "My wife needs all of my support at this time." Susan Brophy faces arraignment October 16th on charges of manslaughter and driving while under the influence of a drug. Brophy, who says that he cannot remove his name from the ballot, was considered an underdog in the 30th Congressional District race. His chances of winning the election now are even slimmer. Brophy says, however, that he is not quitting politics permanently.

Richard D. Gravelle, an attorney with the State Public Utilities Commission, was promoted on September 13th to assistant chief counsel of the commission. Gravelle, who has argued vigorously against several recent proposals for telephone rate increases, has been an attorney with PUC since 1959.

Dr. A. J. Haagen-Smit, chairman of the State Air Resources Board since 1968, has resolved a possible conflict of interest problem by resigning his paid consultant's job with the Los Angeles Air Pollution Control District. Governor Reagan ordered an investigation of Haagen-Smit's dual role in August when the issue came to his attention. For 23 years, Haagen-Smit had been a consultant to the Los Angeles antismog agency, which is regulated by the Air Resources Board. "The issue is closed," said Reagan after Haagen-Smit resigned his Los Angeles position last month.

Michael N. Canlis, Sheriff of San Joaquin County, was named by Governor Reagan on September 19th as chairman of the board of directors of the California Crime Technological Research Foundation. Canlis, a Democrat, was first appointed to the board in 1969 and is the Foundation's first chairman. He is also a member of the California Emergency Council and the Board of Trustees of the Ford Foundation's Police Foundation.

At the University of California's Santa Cruz campus, prize-winning historian **Page Smith,** 55, resigned in protest against the campus' "publish or perish" policy. In a letter sent to faculty colleagues, Smith, who is provost of UCSC's Cowell College, objected to a recent campus decision to terminate philosophy instructor **Paul Lee,** 40, rather than grant him tenure after six years — apparently, Smith said, because Lee had not published enough, concentrating on teaching instead.

On September 22nd, the Regents of the University of California refused to consider the reappointment of **Angela Davis** as a philosophy instructor at UCLA, an appointment she held until her contract was terminated by the Regents in June 1970. That action led the American Association of University Professors to censure UCLA and the Regents early this year for violating the principles of academic freedom and due process. University of California President Charles Hitch said that the question of rehiring Davis was raised by the UCLA faculty, but, said Regents chairman Dean Watkins, "the regents do not desire to reconsider the appointment of Angela Davis."

Raymond Kappe, dismissed as chairman of the architecture department at Cal Poly Pomona last spring, opened his own architectural school on October 2nd. Called The New School, the Southern California Institute of Architecture is located in Santa Monica and has a full-time faculty of eight, most of whom left Cal Poly Pomona to join Kappe's new enterprise. Kappe started the architecture school at Cal Poly, but was removed last April by the college president, Robert C. Kramer, who accused him of administrative blunders. A faculty-student fact-finding committee later called Kappe innocent of most of the charges. About 50 students reportedly have left Cal Poly Pomona to join The New School.

Last month, the Regents of the University of California named **Dr. Francis A. Sooy** to serve as acting chancellor of the University of California's San Francisco campus until a permanent replacement for **Dr. Philip R. Lee,** who announced his intention to resign last February, can be found.

J. Julien Baget, executive director of the Association of Bay Area Governments, announced last month that he plans to leave his position next March 31st. Baget, who has been with ABAG for four years, is a former city manager for the cities of Ojai, Novato, and The Dalles, Oregon. Asked about the status of ABAG, Baget said it is now "right side up and going places." He also observed that "the stage is set for serious legislative consideration of areawide regional mechanisms, though it is difficult to conjecture at this time what type or form they will take."

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. . . certainty generally is illusion, and
repose is not the destiny of man.

-Oliver Wendell Holmes

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